

SUPREME COURT OF QUEENSLAND

CITATION: *Faifuaina v DPP(Qld)* [2003] QCA 6

PARTIES: **FERETI FAIFUAINA**
(applicant)
v
DIRECTOR OF PUBLIC PROSECUTIONS
(respondent)

FILE NO/S: Appeal No 832 of 2003
SC No 11151 of 2002

DIVISION: Court of Appeal

PROCEEDINGS: Application for Extension of Time
Appeal from Bail Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 30 January 2003

DELIVERED AT: Brisbane

HEARING DATE: 30 January 2003

JUDGES: de Jersey CJ, Williams JA and Cullinane J
Separate reasons for judgment of each member of the Court;
each concurring as to the orders made

ORDER: **Application for extension of time refused and appeal dismissed**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED

CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – BAIL – GROUNDS FOR GRANTING OR REFUSING – BEFORE TRIAL – OTHER CASES – where applicant dependent on wife and prepared to surrender passport – where strong prosecution case – whether Judge erred in finding an unacceptable risk of flight

Scrivener v DPP [2001] QCA 454, Appeal No 9094 of 2001, 23 October 2001, applied

COUNSEL: C Cuthbert for the applicant
M J Copley, with J A Woodridge, for the respondent

SOLICITORS: Robinson Hoskin for the applicant
Director of Public Prosecutions (Queensland) for the respondent

THE CHIEF JUSTICE: On the 18th of December 2002 a learned Judge dismissed an application for bail brought by the present applicant. The applicant sought to appeal by notice dated 23 January 2003 which was slightly out of time and he accordingly seeks an extension of time within which to appeal.

It is convenient, however, to address the ground of appeal, which is that the Judge erred in the absence of evidence in finding an unacceptable risk that the applicant, if at large, would not appear when required in Court.

The applicant is charged with a range of offences allegedly committed on the 19th of August 2002. They involved two female complainants aged 14 years and 16 years. He allegedly took the young women separately to his place of residence, attempting to rape one and then, a couple of hours later, raping the other.

I record her Honour's analysis of the issue of flight. She said:

"The Crown opposes bail principally on the basis that the risk of flight is an unacceptable one. The applicant is facing very serious charges and if convicted can expect to receive a substantial custodial term by way of punishment. He has been in this country only seven months. He is prepared to surrender his passport. That may be some safeguard against his leaving the country if granted bail but, of course, it would not necessarily be a safeguard against his failing to answer the conditions of his bail while remaining in this country.

Ms Cuthbert submitted on his behalf that apart from his wife he really has no contacts here and that he is dependent upon her for income and somewhere to live. He is willing to report to police daily. While I take the

force of Ms Cuthbert's submissions, I am concerned at the risk of failure to answer bail and, having regard to the seriousness of the charges he is facing and the reasonably strong Crown case as I see it, I think that risk is an unacceptable one."

In my view her Honour was entitled to take that factual approach on the basis of the considerations to which she refers. That being so, and this being an appeal, then consistently with principle, this Court should not intervene. See *Scrivener* (2001) 125 Australian Criminal Reports 279 at 282.

I would refuse the application for extension of time and formally dismiss the appeal.

WILLIAMS JA: In concluding that the learned Judge at first instance did not err in holding there was an unacceptable risk of the applicant failing to appear when required, I have been influenced by the apparent strength of the prosecution case as revealed by the material before this Court.

If, after committal, the strength of the case appeared otherwise then there may well be grounds for reconsidering the issue of bail. I agree with what has been said by the learned Chief Justice and the orders he proposes.

CULLINANE J: I agree with what the other members of the Court have said and I also agree that the application should be refused.

THE CHIEF JUSTICE: The application is refused and the appeal is dismissed.
