

SUPREME COURT OF QUEENSLAND

CITATION: *R v Smith* [2003] QCA 193

PARTIES: **R**
v
SMITH, David Anthony
(applicant)

FILE NO/S: CA No 39 of 2003
DC No 305 of 2002

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Ipswich

DELIVERED EX TEMPORE ON: 9 May 2003

DELIVERED AT: Brisbane

HEARING DATE: 9 May 2003

JUDGES: de Jersey CJ, Davies JA and Helman J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for extension of time within which to seek leave to appeal against sentence dismissed**

CATCHWORDS: APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND PROCEDURE - QUEENSLAND - TIME FOR APPEAL - EXTENSION OF TIME - WHEN REFUSED - where applicant pleaded guilty to offences of assault and grievous bodily harm - where applicant sentenced to three years imprisonment suspended after 12 months - where offence very serious with very serious consequences - where applicant gave no explanation for the delay of five months in applying for extension of time - whether extension of time should be granted

COUNSEL: The applicant appeared on his own behalf
D A Holliday for respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for respondent

THE CHIEF JUSTICE: I will invite Justice Davies to deliver the first judgment.

DAVIES JA: This is an application for an extension of time within which to seek leave to appeal against an effective sentence of three years' imprisonment, suspended after 12 months, with an operational period of five years, imposed in the District Court, on 19 September 2002. That sentence was imposed upon a plea of guilty by the applicant to offences of common assault and grievous bodily harm, both committed on 11 April 2002.

The sentence to which I have just referred was imposed in respect of the grievous bodily harm offence. A concurrent sentence of three months imprisonment was imposed in respect of the common assault.

The applicant was 27 years of age at the time of sentence and although he has no previous convictions for offences of personal violence, he has a long criminal history starting from 1992, involving a large number of offences, mostly involving stealing motor vehicles, for which on numerous occasions, he has served terms of imprisonment.

Some of his criminal record, as evidenced by a police document, was disputed by the applicant in his oral submissions today, but even if the disputed offences are deleted from his record, it is still substantial.

In his written application, the applicant gave no explanation for the delay to which I have just referred in applying for the extension of time. The delay is about five months. The applicant has not sought to explain that delay before us this morning.

The learned sentencing judge has described the circumstances of the grievous bodily harm as constituting a very serious assault, with very serious consequences. That is an accurate description. The applicant assaulted the complainant, who it seems did not provoke him, at least physically, in any way. He punched him in the head, causing the complainant to fall and hit his head on the concrete. The applicant then threw the complainant against a car, causing a dent in the car. He then put his hands around the complainant's neck, causing the complainant to turn blue and make a gagging sound. The complainant went to the ground and it seems he was unconscious. The applicant then stomped on his head with his foot, four or five times.

The complainant suffered injuries which included a broken jaw, pain, soreness to his head and shoulders. He suffered serious physical and emotional effects.

The applicant, at the time of committing the offence, had consumed a considerable amount of alcohol and was, it seems, going through a lot of personal and emotional issues, which the learned sentencing judge accepted affected his conduct.

The applicant has set out in his application three grounds of appeal, upon which he has expanded today. In short, he has related to this Court a somewhat different version of the events, from those which were accepted by him on his plea of guilty.

The version which he gives involves some oral statements by others which he said, in effect, caused him to in fact engage in the very serious conduct to which I have referred, resulting in grievous bodily harm, with the consequences to which I have referred.

There is, as I have already said, no satisfactory explanation for the delay and in my opinion, there would be no reasonable prospects of success on appeal if an extension of time were granted. I would therefore dismiss the application.

THE CHIEF JUSTICE: I agree.

HELMAN J: I agree.

THE CHIEF JUSTICE: The application is dismissed.