

SUPREME COURT OF QUEENSLAND

CITATION: *R v Millar* [2003] QCA 212

PARTIES: **R**
v
MILLAR, Andrew John
(applicant)

FILE NO/S: CA No 72 of 2003
DC No 1613 of 2002

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 23 May 2003

DELIVERED AT: Brisbane

HEARING DATE: 23 May 2003

JUDGES: McMurdo P, Williams JA and White J
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Application for an extension of time within which to
appeal against sentence refused**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND
PROCEDURE – JUDGMENT AND PUNISHMENT –
SENTENCE – OTHER MATTERS – QUEENSLAND –
where sentencing judge made observations culminating in an
endorsement on the front of the transcript – whether these
comments affect the sentence imposed – whether comments
are relevant considerations for a body considering whether
applicant should be granted post-prison community based
release or entitlement to remissions

COUNSEL: The applicant appeared on his own behalf
C W Heaton for the respondent

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

WILLIAMS JA: The applicant pleaded guilty on 14 June 2002 to an offence of stalking with circumstances of aggravation and additional offences of dangerous operation of a motor vehicle and common assault.

Conviction for those offences also activated a suspended sentence of nine months' imprisonment imposed on 21 August 2000.

The effective sentence imposed was that of two years' imprisonment for the stalking offence. The other lesser sentences, including the suspended sentence, were ordered to be served concurrently with that.

The applicant sought to appeal to the Court of Appeal against that sentence and that application was dismissed on 25 September 2002.

The applicant appears to have been concerned that there were problems in working out what was meant by the sentence. That led to correspondence between he and the District Court and ultimately the Chief Judge of the District Court asked the sentencing Judge to relist the matter in order to clear the air of the issues being raised by the applicant.

The matter came before the District Court again on the 10th and 15th January 2003. There is quite a lengthy transcript of what occurred. There was no formal application to reopen the sentence pursuant to Section 188 of the Penalties and Sentences Act and it is clear to this Court that there is no basis on which there could be such a reopening.

The sentencing Judge on the 10th and 15th of January made a number of observations which culminated in his having recorded on the front of the transcript the following notation:

"Prisoner sentenced to two years imprisonment with no recommendation. Prisoner wishes clarification on certain matters. Prisoner has serious misunderstandings and misapprehensions. The prisoner released, if and when, and only if and when, executive decides appropriate."

In my view, there was no order made on either the 10th or the 15th January which could found an application for leave to appeal to this Court.

However I am prepared to have recorded that the matters in the transcript of the 10th and 15th January 2003 and the endorsement thereon do not in any way affect the sentence imposed nor are they relevant considerations for a body considering whether the applicant should be granted post-prison community based release or any body considering the prisoner's entitlement to remissions.

He is entitled to the same consideration as any prisoner in his circumstances sentenced to a head sentence of two years in the light of what was said by the Court of Appeal on 25th September 2002.

No doubt that is all that was intended by the sentencing Judge in making his remarks on the 10th and 15th January 2003.

In the circumstances, the application for an extension of time to appeal should be refused, but the remarks that have been made herein should be transmitted to the appropriate prison authorities.

THE PRESIDENT: I agree.

WHITE J: I agree also.
