

SUPREME COURT OF QUEENSLAND

CITATION: *R v Mulholland* [2003] QCA 257

PARTIES: **R**
v
MULHOLLAND, Ross Barry
(applicant)

FILE NO/S: CA No 128 of 2003
SC No 541 of 2000

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction)

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 18 June 2003

DELIVERED AT: Brisbane

HEARING DATE: 18 June 2003

JUDGES: Davies and Williams JJA and Atkinson 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 appeal
against conviction dismissed**

CATCHWORDS: APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND
PROCEDURE - QUEENSLAND - TIME FOR APPEAL -
EXTENSION OF TIME - WHEN REFUSED - where
applicant pleaded guilty to attempting to strike with a
projectile - where applicant alleged that Crown indicated that
if he did not plead guilty, he would be charged with
attempted murder - where charge of attempted murder was
open on the facts - where there was no evidence of
intimidation in securing the plea - whether extension of time
within which to appeal against conviction should be granted

COUNSEL: Applicant appeared on his own behalf
S Bain for respondent

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

DAVIES JA: This is an application for an extension of time within which to appeal against a conviction for attempting to strike with a projectile. The applicant pleaded guilty to a number of offences including this one on 27 April 2001. He

was sentenced to 10 years imprisonment. An application by him against a sentence was dismissed by this Court on 5 November 2001.

This application was filed on 23 April 2003. No satisfactory explanation for the delay has been given other than, as the applicant said to us this morning, he was unaware that this was a matter for the Courts until he read Carter's Criminal Law. Having been informed, he said, that it was a matter for complaint to the Law Society. Although I do not think that is a satisfactory explanation for the delay, I think it is appropriate nevertheless to consider the prospects of an appeal if the application for extension of time were granted.

The basis for the application is the applicant's contention, unsworn and unsupported, that the Director of Public Prosecutions indicated that if he did not plead guilty to this offence, she would charge him with attempted murder. The facts of this case show that a charge of attempted murder was plainly open and the conviction for attempted murder was plainly open. The applicant deliberately aimed a pistol at a police officer and fired it, and this was after he had fired it at a police car carrying two police officers.

He was apparently charged with attempted murder, but when he decided to plead guilty to this offence, that charge it seems, was withdrawn. The applicant was represented at his sentence hearing by experienced counsel, Mr Kimmins, who may well have indicated to him the possibility that, as it seems to be the

case, the attempted murder charge would proceed if he did not plead guilty to this offence.

He elected to plead guilty to it. There was no evidence that intimidation was involved in securing his plea, as he contends. There is, in my opinion, no substance in the contention which the appellant seeks to make that what occurred at his sentence was an attempt to pervert the course of justice. I would therefore dismiss the application for extension of time.

WILLIAMS JA: I will merely add to what has been said by the learned presiding judge that the applicant sought leave to appeal against the sentence, and that matter was heard by this Court on 5 November 2001 and was then dismissed. It appears that on that occasion none of the issues now sought to be raised were mentioned before the Court. I agree with the reasons of the presiding judge and with the order proposed.

ATKINSON J: I agree with the reasons of the presiding judge and the order which his Honour proposed.

DAVIES JA: The application is dismissed.
