

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Gourley* [2003] QCA 307

PARTIES: **R**  
**v**  
**GOURLEY, Merrilyn Ann**  
(applicant)

FILE NO/S: CA No 153 of 2003  
DC No 212 of 2002

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Townsville

DELIVERED EX TEMPORE ON: 21 July 2003

DELIVERED AT: Brisbane

HEARING DATE: 21 July 2003

JUDGES: Williams JA, Mackenzie and Helman JJ  
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 sentence refused**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PRACTICE- AFTER CRIMINAL APPEAL LEGISLATION – MISCELLANEOUS MATTERS – QUEENSLAND – PROCEDURE – EXTENSION OF TIME, NOTICE OF APPEAL AND ABANDONMENT – where applicant convicted on plea of guilty to fraud – where applicant sought extension of time in which to seek leave to appeal against sentence – where 9 months out of time – where applicant claimed she was never advised by her legal representative that she could appear without cost to herself on her own behalf on appeal – where applicant would claim sentence was manifestly excessive if application granted

COUNSEL: The applicant appeared on her own behalf  
Mr Pointing for the respondent

SOLICITORS: The applicant appeared on her own behalf  
Director of Public Prosecutions for the respondent

MACKENZIE J: This is an application for an extension of time in which to seek leave to appeal against a sentence.

On the 9th of August 2002 the applicant pleaded guilty to dishonestly obtaining money in excess of \$5,000 from her employer, the Defence Force Credit Union. She was sentenced to six years' imprisonment with a recommendation that she be considered eligible for parole after serving two years and three months.

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Over a four and a half year period when she was between 42 and 46 years' of age she defrauded her employer by opening a series of loan accounts in other names, drawing down most of the available funds and gambling them away. Some moneys were used to service loan payments in an attempt to conceal her wrongdoing. Eventually when she could no longer do so she went to the police and confessed. The total actual loss to her employer was over \$213,000.

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The application for extension of time was filed on the 16th of May 2003, about nine months out of time. The explanation advanced for not applying within the prescribed time for leave to appeal against sentence is that the applicant was advised by her legal representatives immediately after the sentence was imposed that they recommend that she not appeal and probably would not get legal aid funding.

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The subsequent letter from Legal Aid made the same recommendation but said that if she wished to appeal she had 28 days and would have to be reassessed for legal aid. She says the letter did not say that she could represent herself at no cost to herself and she was not aware that she could do

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so until several months after she was sentenced when another inmate told her that she could.

The present application was lodged after she became aware of other cases involving similar sums of money where, she says, the offenders received a lesser sentence than herself. If given leave to extend time she would wish to argue that the sentence was manifestly excessive with particular reliance on the matters of *The Queen v. Spalding* [2002] QCA 538; *The Queen v. Wheeler and Sorrenson* [2002] QCA 223; and *The Queen v. Reischl* [2000] QCA 215.

Court of Appeal decisions provide a more authoritative guide to appropriate sentencing levels than individual sentences imposed at first instance. The applicant today has referred us to a particular first instance decision which, she says, supports her case but the comment that I have just made has to be taken into account. The DPP provided a schedule of offences and, as one would expect, cases where large sums of money are involved generally attract a higher penalty than those where the sum is relatively small. There is, of course, no precise sliding scale of head sentences according to the sum involved. Individual circumstances of the case often affect both the level of head sentence and the provision for early release.

In addition to the authorities already referred to counsel for the Director referred, in the outline of argument, to the matters of *The Queen v. Cheers* [1997] QCA 329 and *The Queen v.*

Power [1998] QCA 032. Examination of the authorities to which I have referred shows that a head sentence of six years falls within the pattern for the sum of this kind and the provision for early release after two years and three months is not outside a proper exercise of discretion in a case where the antecedents are similar to those of the applicant.

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In summary, relevant factors were that the offending occurred over a period of four and a half years and involved a breach of trust. The applicant cooperated by voluntarily desisting from her conduct, reporting her conduct to the police and making full admissions and an early plea of guilty. She had no previous convictions and said that prior to a sequence of deaths of a child and each of her parents within a relatively short period she had not had a gambling habit.

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Along with a submission that the sentencing Judge failed to adequately take into account the circumstances of her offending and the matters personal to her, there was a particular complaint that she had displayed no remorse. I have not been able to find any such statement in the transcript. To the contrary, the sentencing remarks refer to aspects of her cooperation and the personal factors in her favour as affecting the outcome. There is no error in principle in the way in which the learned sentencing Judge approached the sentence.

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In the circumstances, the application for leave to appeal against sentence would have no reasonable prospect of success

if an extension of time were granted. It is, therefore, appropriate to order that the present application for an extension of time be refused.

WILLIAMS JA: I agree.

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HELMAN J: I agree.

WILLIAMS JA: The order of the Court is, the application is dismissed.

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