# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Ettridge v DPP (Qld)* [2003] QCA 410 |
| PARTIES: | **DAVID WILLIAM ETTRIDGE**<br>(applicant/appellant)<br>**v**<br>**DIRECTOR OF PUBLIC PROSECUTIONS (QUEENSLAND)**<br>(respondent) |
| FILE NO/S: | Appeal No 7799 of 2003<br>Appeal No 7800 of 2003<br>SC No 7539 of 2003 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Miscellaneous Application - Civil<br>Appeal from Bail Application |
| ORIGINATING COURT: | Supreme Court at Brisbane |
| DELIVERED ON: | 15 September 2003 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 9 September 2003 |
| JUDGES: | Jerrard JA, Dutney and Philippides JJ<br>Judgment of the Court |
| ORDERS: | **1. Application for bail refused**<br>**2. Appeal against refusal of bail dismissed** |
| CATCHWORDS: | CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – BAIL – JURISDICTION OF SUPREME COURT – AFTER CONVICTION – where applicant applies for bail in this Court – where authority requires applicant to establish strong grounds that his conviction will be allowed and that majority of his sentence will be served before appeal is decided – whether applicant has satisfied these requirements<br><br>CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – BAIL – GROUNDS FOR GRANTING AND REFUSING – SPECIAL OR EXCEPTIONAL CIRCUMSTANCES – PARTICULAR CASES – where appellant refused bail pending appeal – where learned judge below directed himself that the appellant must show exceptional circumstances to be granted bail pending appeal – where High Court authority confirms this approach – whether learned judge below applied correct test |

*Criminal Code* (Qld), s 408C(1)(f)

*Ex parte Maher* [1986] 1 Qd R 303, followed
*Marotta v R* (1999) 73 ALJR 265, considered
*United Mexican State v Cabal & Ors* (2001) 183 ALR 645, applied
*Walser v R* (1994) 73 A Crim R 153, discussed

COUNSEL: B Walker SC for the applicant/appellant
B G Campbell, with S E McGee, for the respondent

SOLICITORS: Boe & Callaghan for the applicant/appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **THE COURT**: David Ettridge has applied to this Court by an application dated 2 September 2003 for an order that he be admitted to bail on a conviction under s 408C(1)(f) of the *Criminal Code*, in respect of which he is currently serving a sentence of three years imprisonment. He has also appealed to this Court by a notice dated 2 September 2003 against an order of a learned judge in the Trial Division of this Court made 1 September 2003, refusing his application before that judge for an order admitting him to bail on that conviction.

[2] Mr Ettridge has filed affidavits in support of his application for bail and his appeal against the refusal to grant him bail; and those documents include copies of an appeal by him against his conviction of that offence and of his amended grounds of an application for leave to appeal against his sentence of three years imprisonment. He presses his application for bail before this Court by repeating the submissions made to the learned judge whose order has been appealed against, and by further written submissions. Those written submissions include submissions on the appeal, in which it is submitted the learned judge wrongly directed himself on the relevant law.

[3] Mr Ettridge was found guilty on 20 August 2003 after a trial and convicted that same day. He had represented himself throughout the trial and made no relevant submissions in mitigation of penalty. What little he said is recorded at page 29 of the record book for this application.

[4] The learned judge who heard the application for bail pending appeal directed himself that the grant of such bail is most unusual and that an applicant must show exceptional circumstances. This approach is not criticised, but the further observations by the learned judge that a grant of bail after conviction undermines the finality of a jury verdict is queried in the appellant's written submission to this Court. The appellant submits that the remarks by Callinan J in the matter of *Marotta v R* (1999) 73 ALJR 265 suggest that it should be doubted whether a grant of bail treats a verdict of guilty as provisional. Much as one respects any observations by Callinan J, the comments by the learned trial judge who heard the application for bail, namely that such a grant after conviction undermines the finality of the jury verdict so that the trial and conviction take on a provisional aspect and appear to be only a step in the process of conviction which would not conclude until judgment was given on an appeal, repeat comments by Thomas J in *Ex parte Maher* [1986] 1 Qd R 303 at 310, which comments were quoted with

approval in the joint judgment of Gleeson CJ, McHugh, and Gummow JJ in *United Mexican States v Cabal & Ors* (2001) 183 ALR 645 at 656.

[5] In *Cabal* that joint judgment confirmed that in a criminal case an order granting bail pending appeal will be made if there are exceptional circumstances, and further that ordinarily bail would be granted in such cases only if two conditions are satisfied. One is that the applicant must demonstrate that there are strong grounds for concluding that the appeal will be allowed; and the second that the applicant must show that the sentence, or at all events the custodial part of it, is likely to have been substantially served before the appeal is decided.

[6] Both before the learned judge and before this Court, Mr Ettridge's application for bail focused more upon his application for leave to appeal against his sentence than upon his prospects of success in having his conviction overturned. Regarding his sentence application, the learned judge wrote that Mr Ettridge advanced a number of reasons, some or all of which might ultimately be accepted, to show why his sentence should be reduced. The judge went on to hold that it was only if there was a high likelihood that the sentence would be substantially reduced, and that the reduction would be such that it would be unjust to require the applicant to spend that time which would elapse until the appeal was heard in custody, that bail should be granted. So expressed, namely requiring that it be highly likely or there be a high likelihood that the sentence would be substantially reduced, such that it was unjust to require Mr Ettridge to remain in prison until his application is actually heard on its merits, says nothing different from what the joint judgment in *Cabal* described, namely that there should be strong grounds for concluding that (the application for leave to appeal against sentence) would succeed. The appellant Ettridge complained that the learned judge erred when he restated what he had written, to be that it must appear "almost certain" that the appeal on sentence would succeed and that the result would be terms of imprisonment of about three months or less. It is submitted that the requirement that it be "almost certain" that the appeal would succeed was a misstatement of law.

[7] Where bail on an appeal against sentence is sought, we see no significant difference in saying Mr Ettridge must establish:

- strong grounds for concluding that his application will be allowed; as against
- a high likelihood that his sentence will be substantially reduced; or
- it being almost certain that the appeal against sentence would succeed.

Establishing either of the first two propositions would usually be enough, in practical terms, to establish the third; although it is a more absolute test than the authorities justify. It remains the fact that the judge did also put the requirement with more accuracy.

[8] The written submissions given to the learned judge by Mr Ettridge suggested Mr Ettridge needed to show "good prospects of success", and that he did this by reason of obvious errors in the proceeding in which Mr Ettridge was sentenced. The written submission in support of the application to this Court submits that "exceptional circumstances" are established, that the sentencing process miscarried in several respects and was irregular, and that what must be established is that Mr Ettridge has a reasonably arguable case on appeal. The submission is that

exceptional circumstances are established because, as explained by Thomas J in *Maher*, the factors in the case favouring the grant of bail after conviction outweigh those against, a circumstance usual enough to be called exceptional. The appellant cited *Walser v R* (1994) 73 A Crim R 153, in support of the term "a reasonably arguable case"; in which appeal short terms of imprisonment were originally imposed, such that the person appealing may well have served the sentence before the appeal was ultimately decided. That is not the case here.

[9] The most authoritative expression of what is needed is that of the joint judgment in *Cabal*, namely that the Court must be satisfied there are exceptional circumstances, which include the applicant showing that there are strong grounds for concluding that the application for leave to appeal against sentence will succeed. That application as drafted and as supported in this application for bail, and in the appeal, principally attacks the process which lead to the particular sentence being imposed, rather than simply arguing that the sentence is manifestly excessive.

[10] The facts in this matter are obviously unusual and are helpfully summarised in the judgment under appeal. These are that an application was made on 15 October 1997 to register a political party in the name Pauline Hanson's One Nation. The Crown case to the jury was that at that date there were relevantly two separate and distinct groups of people. One was the political party, known as Pauline Hanson's One Nation, it being an organisation whose object was the promotion of the election of candidates endorsed by the party to the Legislative Assembly of Queensland. The other group of people were members of an incorporated association, initially named Pauline Hanson Support Movement Inc.

[11] A pre-condition of registration of a political party in Queensland was that it have at least 500 members eligible to vote in Queensland State elections. The Crown case was that the political party, Pauline Hanson's One Nation, did not have 500 members or more, but the incorporated association did. However, it was not a political party and was not entitled to be registered as such. The substance of the charge on which Mr Ettridge was convicted was that he and Ms Hanson dishonestly informed the Electoral Commission that the more than 500 names on a list supplied were members of the party, thereby inducing the Commissioner to register the political party which actually failed to meet the required number of members.

[12] The maximum term of imprisonment for Mr Ettridge's offence was five years. Accordingly, a sentence of three years imprisonment may well appear high to the Court deciding Mr Ettridge's application for leave to appeal against his sentence, but that does not mean that he has established there are strong grounds for concluding that that application will be allowed on the grounds the sentence is manifestly excessive, and that the result will be a decision that he ought either not to have been imprisoned at all, or else to have been imprisoned at most for a period of three weeks, or some other short period. Likewise, if the asserted numerous errors in the sentencing process result in the applicant being re-sentenced, he may persuade the re-sentencing court that only a nominal penalty should be imposed, but that is not the test. The learned judge applied the appropriate test, albeit not worded in the identical terms to those used in *Cabal*, and both the appeal and the application for bail should be dismissed.