SUPREME COURT OF QUEENSLAND

CITATION:	*R v Edwards* [2004] QCA 20
PARTIES:	**R** v **EDWARDS, Kevin Raymond** (applicant)
FILE NO/S:	CA No 357 of 2003 DC No 461 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence)
ORIGINATING COURT:	District Court at Beenleigh
DELIVERED EX TEMPORE ON:	11 February 2004
DELIVERED AT:	Brisbane
HEARING DATE:	11 February 2004
JUDGES:	de Jersey CJ, Davies JA and Mackenzie 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 sentence refused**
CATCHWORDS:	APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND PROCEDURE - QUEENSLAND - TIME FOR APPEAL - EXTENSION OF TIME - WHEN REFUSED - where applicant convicted of rape, attempted rape and sexual assault with aggravation - where circumstances of the offences were shocking - whether application for extension of time in which to seek leave to appeal against sentence should be granted
COUNSEL:	Applicant appeared on his own behalf P F Rutledge for respondent
SOLICITORS:	Applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: The applicant was sentenced on 4 April 2003 on one count of burglary to which he was sentenced to 10 years imprisonment; one of sexual assault for which he was sentenced to five years of imprisonment, eight of sexual assault with a circumstance of aggravation; on seven of which he was

sentenced to seven years and on the last, eight years imprisonment; three counts of rape for which he was sentenced to 15 years imprisonment and one count of attempted rape for which he was sentenced to 10 years imprisonment.

He did not file an application for leave to appeal against those sentences within time but sought by an application dated 4 November 2003 an extension of time within which to make such application.

The applicant asserts that his lawyers were incompetent in that they did not lodge an appeal when he asked them to. He has adduced no evidence in support of this assertion which is one not uncommonly made in cases such as this. In my opinion it is unnecessary to consider whether there is any substance in this assertion because of the matters to which I am about to refer.

The plaintiff, who is 33 years of age, already had a bad criminal record. He had been previously convicted of assaults as well as other offences. At the time of the commission of these offences he was on parole in respect of a four year sentence imposed in New South Wales for malicious wounding.

All of the offences the subject of the present sentences occurred in a single episode on 11 December 1999. The circumstances, which I will describe only briefly, are quite shocking.

The appellant broke and entered the dwelling of the complainant, who was then pregnant, at about 3.15 a.m. She was alone in the house and asleep at the time. She awoke to find the applicant at her bedroom door. He then commenced to indecently assault her by grabbing her around the throat. He performed oral sex on her, demanded that she perform oral sex on him and repeated this on a number of occasions.

He then had forced vaginal intercourse with her and then repeated his demands for oral sex. This process was repeated during which the applicant was threatening to hurt the complainant unless she complied. He then attempted to have anal intercourse which she managed to prevent by contracting her buttocks. He again then had vaginal intercourse with her, then appeared to ejaculate inside her. By this time she was bleeding. She told the applicant she thought she was miscarrying and asked him to call an ambulance. He replied, "You're not pregnant anymore, you're going to have a bath."

He then forced her to have a bath in circumstances where the water was rushing directly into her vagina. He then put his hand in her vagina apparently in an attempt to wash it out. Before leaving he told the complainant to remember what he had said earlier, which had been that if she told anyone he would come back and kill her and her family.

The circumstances as I have described it demonstrate how serious this series of offences was and how devastating their effect must have been on the complainant. There is no doubt,

in my opinion, that they justified, for their totality, a sentence of 15 years imprisonment. A declaration that those offences resulted in sentences of 10 years or more were serious violence offences followed automatically.

In my opinion, if an application for an extension of time within which to appeal was granted there would be no reasonable prospect of success in an appeal against sentence. For that reason I would refuse this application.

THE CHIEF JUSTICE: I agree.

MACKENZIE J: I agree.

THE CHIEF JUSTICE: The application is refused.
