

SUPREME COURT OF QUEENSLAND

CITATION: *R v Johnson* [2004] QCA 106

PARTIES: **R**
v
JOHNSON, Geoffrey Keith
(applicant)

FILE NO/S: CA No 4 of 2004
DC No 385 of 2003
DC No 386 of 2003

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 13 April 2004

DELIVERED AT: Brisbane

HEARING DATE: 13 April 2004

JUDGES: McMurdo P, McPherson JA and Holmes J
Separate reasons of each member of the Court, each concurring as to the orders made

ORDERS: **1. Grant the extension of time within which to apply for leave to appeal against sentence**
2. Allow the application for leave to appeal against sentence
3. Allow the appeal against sentence to the limited extent of reducing the head sentence imposed on counts 1 and 2 from seven years imprisonment to five years imprisonment

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN GRANTED – where applicant pleaded guilty to two counts of fraud with circumstance of aggravation of being an employee and one count of forgery – where sentenced to effective term of 7 years imprisonment with recommendation for post-prison community-based release after 2 years – where final amount of loss to bank about \$340,000 – where did not lodge application for leave to appeal within time due to anxiety at incarceration – whether extension of time should be granted to allow application for leave to appeal to be lodged –

whether sentence was manifestly excessive

COUNSEL: The applicant appeared on his own behalf
BG Campbell for the respondent

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

THE PRESIDENT: The applicant pleaded guilty to an ex officio indictment charging him with two counts of fraud with the circumstances of aggravation that he was an employee and that the property dishonestly applied exceeded \$5000 and one offence of forgery. He was sentenced to seven years imprisonment on the fraud counts and five years imprisonment on the forgery on 27 February 2003 and was recommended for post prison community based release after two years.

He attempted to file and serve a notice of appeal on 5 January 2004, nine months out of time. He blames his anxiety at his incarceration for the delay in applying for leave to appeal on the basis that the sentence was manifestly excessive. He says that only in mid-December did he realise he could apply for an extension of time and once he was aware of that he immediately did so.

The offences occurred between 28 February 1999 and 31 March 2002. The applicant had been employed as the Relationship Manager, Business Banking with the Bank of New Zealand Australia, National Australia Bank Limited. He was largely autonomous and had access to the bank's computers.

Count 1 covered 80 occasions on which he withdrew transferred funds from accounts for which he held responsibility and made a personal gain of \$112,931.

Count 2 concerned a large number of unauthorised transactions in the course of his employment. These included depositing clients' funds to accounts under his control instead of in term deposits, obtaining loan funds in clients' names without their knowledge or consent, misusing expense accounts in his own name, and making advances to clients without proper bank authority and outside appropriate guidelines. He committed these offences in an attempt to meet his employer's demanding targets and to protect his own position within the bank by covering up bad debts and boosting the appearance of his own performance which, in reality, was below the targets set by his employer. He deposited over \$8.6 million of clients' funds in this way although only \$3,288,613 of clients' funds were misdirected. He had also written unauthorised loans of \$3,349,000. At the time of sentence the losses to the bank amounted to over \$300,000 with the potential to reach a much larger sum.

Count 3 related to his continued efforts to cover his fraudulent transactions by arranging to have clients' bank statements sent to him instead of them. He then produced false statements which were sent to the clients.

He was a mature man, 43 years old, and had no prior convictions. He had two dependent children, one of whom had a chronic lung disease. He co-operated extensively in the investigation of the matter with both the bank and police, informing the authorities of some details of his unlawful conduct of which they were not otherwise aware. At sentence, the Court was told that the bank had commenced a civil action against the applicant and with the anticipated sale of his Kalinga home, it is likely that they will recover most of their loss. At this application today, the applicant, who appears for himself, tells us that the bank has, since sentence, agreed on compensation of \$340,000; that amount will be repaid in full from the future sale of his unencumbered house.

The maximum penalty on each count of fraud was 10 years imprisonment. The respondent relies on the matters of *R v Clarke* [2001] QCA 152; CA No 3 of 2001, 20 April 2001; *R v Anderson* [2000] QCA 257; CA No 52 of 2000, 30 June 2000 and *R v Webber* [2000] QCA 316; CA No 436 of 1999, 8 April 2000 as comparable matters supporting the sentence imposed here. Those cases are, however, more serious than this case and, as is common, are not truly comparable with the circumstances here.

The following factors in this case are particularly relevant: the applicant was especially co-operative with the bank and the authorities, as I have said, admitting his unlawful conduct, some of which was previously unknown to the

authorities; he pleaded guilty by ex officio indictment; he will repay the amount claimed by the bank as compensation so that the bank will not apparently be out of pocket because of his conduct. The amount on the rather vague facts placed before the sentencing Judge indicate that although he unlawfully deposited a large amount of bank funds, the amount actually misappropriated was much less and the final amount of the loss to the bank was about \$340,000.

Despite the sophisticated, serious abuse of trust for significant gain over a protracted period, the sentence of seven years imprisonment in all the circumstances here does appear to be manifestly excessive. The appropriate head sentence would seem to be one of five years imprisonment. The recommendation for post prison community based release remains, however, appropriate.

The applicant, having given some explanation as to why he failed to lodge his notice of appeal within time and having demonstrated the merit of his proposed application for leave to appeal against sentence, is entitled to the extension of time and to other consequential orders.

I would make the following orders: I would grant the extension of time; allow the application for leave to appeal; and allow the appeal to the limited extent of reducing the head sentence imposed on counts 1 and 2 from seven years imprisonment to five years imprisonment.

McPHERSON JA: I agree. As the President has said, the facts including the total amount of the loss to the bank are not especially clear or precisely established by the material before us. The applicant himself told us that a principal part of the large sums referred to in the material is capable of being explained by the fact that he acted in excess of his authority by extending existing loans of customers of the bank. The result was that the bank was placed at risk for large sums of money but it does not appear from the material, at least with any clarity, that the applicant received anything like as much as the amounts referred to, nor that the bank lost anything like such sums. The case in that respect, it seems to me, to differ from a number of the comparable sentencing precedents in which large sums have been lost to the employer and the applicant or offender has personally benefited a great deal from them.

For the reasons I have mentioned, and for those explained by the President in what she has said, I would allow the application and make the orders the President has proposed.

HOLMES J: I agree with the reasons of the President and those of Justice McPherson and with the proposed orders.

THE PRESIDENT: Those are the orders of the Court.
