SUPREME COURT OF QUEENSLAND

CITATION:	*R v Millar* [2004] QCA 153
PARTIES:	**R** **v** **MILLAR, Andrew John** (applicant)
FILE NO/S:	CA No 373 of 2003 DC No 2698 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Application for Reopening (Criminal)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	11 May 2004
DELIVERED AT:	Brisbane
HEARING DATE:	11 May 2004
JUDGES:	McMurdo P and Muir and Mullins JJ Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application to reopen application for leave to appeal against sentence heard by the Court of Appeal on 10 February 2004 refused**
CATCHWORDS:	CRIMINAL LAW – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – ILLEGALITY OF SENTENCES – GENERALLY – where application to reopen application for leave to appeal against sentence pursuant to s 188(1)(b) *Penalties and Sentences Act*1992 (Qld) – whether matters referred to by applicant would allow Court to reopen application for leave to appeal against sentence *Penalties and Sentences Act* 1992 (Qld), s 188(1)(b)
COUNSEL:	The applicant appeared on his own behalf M J Copley for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: This is an application for a reopening of the applicant's application for leave to appeal against sentence which was heard by this Court on 10 February 2004. That application was dismissed on 20 February 2004: see *R v Millar* [2004] QCA 25; CA No 373 of 2003, 20 February 2004. It seems this application is brought under s 188(1)(b) of the *Penalties and Sentences Act* 1992 (Qld) which gives a court a discretion to reopen a criminal proceeding where the court failed to impose a sentence that the Court legally should have imposed.

For the purposes of this application I am prepared to accept this Court can potentially re-open a matter under s 188(1)(b), something not conceded by the respondent.

The principal decision in the reasons for judgment in the applicant's application for leave to appeal against sentence was given by Justice Williams with whom Justice McPherson and I agreed. The applicant, who then and again today, appears for himself, has addressed in his written outlines a number of paragraphs in the reasons for judgment which he disputes. In his oral argument he has, in part, disavowed that written document and has orally expanded on his contentions.

They are primarily as follows. He contends insufficient weight was given to what was effectively his early plea of guilty. He also objects to some of the observations in the reasons for judgment which he contends will be unhelpful to him in his pending application for parole. The applicant also

objects to the following comments in the reasons for judgment at paragraph 18:

> "Given his criminal history, which contains numerous offences of dishonesty, it is unlikely that he would have been released significantly early under the sentence imposed on 14 June 2002."

He correctly points out that the reasons for judgment did not specifically refer to the recommendation for parole given after 12 months in the sentence imposed on him on 14 June 2002. That omission has not, however, affected the Court's reasoning process in dismissing his application for leave to appeal against sentence.

The applicant's application for leave to appeal against sentence was not dismissed because of any of the matters referred to by the applicant in his oral and written submissions today. It was dismissed because the cumulative sentence imposed on 6 November 2003 of two and a half years imprisonment with a recommendation for parole after serving nine months was not excessive, despite his guilty plea after taking into account his extensive prior criminal history for property offences and the need for deterrence, his maturity and the nature of the offences themselves, which were committed whilst he was subject to bail and the suspended sentence.

None of the matters he raises today demonstrate any reason under s 188(1)(b) which would allow this Court to reopen his earlier application for leave to appeal against sentence. His

application today is a misconceived attempt to take issue with the Court's reasons for judgment and to relitigate matters already argued before and finally determined by, this Court, namely the appropriateness of the cumulative nature of the sentence imposed at first instance.

If he is dissatisfied with the judgment of this Court his only recourse is to apply to the High Court for special leave to appeal. It is not to the point that he will or may be released before any application to the High Court would be heard.

I would refuse the application to reopen the application for leave to appeal against sentence heard by this Court on 10 February 2004.

MUIR J: I agree.

MULLINS J: I agree.

THE PRESIDENT: That is the order of the Court.
