

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Gallaher* [2004] QCA 160

PARTIES: **R**  
**v**  
**GALLAHER, Kenneth Samuel**  
(applicant)

FILE NO/S: CA No 5 of 2004  
DC No 50 of 2003

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence & Conviction)

ORIGINATING COURT: District Court at Gympie

DELIVERED EX TEMPORE ON: 12 May 2004

DELIVERED AT: Brisbane

HEARING DATE: 12 May 2004

JUDGES: Williams JA and Muir and Mullins JJ  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Grant an extension of time within which to file an appeal against conviction and application for leave to appeal against sentence until the 5<sup>th</sup> of January 2004**

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 of dangerous operation of a motor vehicle causing death – where sentenced to three and a half years imprisonment with a five year licence disqualification – where applicant appeared on his own behalf and, because of intellectual limitations, had difficulty in articulating submissions – whether extension of time within which to appeal against conviction and apply for leave to appeal against sentence should be granted in the interests of justice

COUNSEL: The applicant appeared on his own behalf  
R G Martin for the respondent

SOLICITORS: The applicant appeared on his own behalf

Director of Public Prosecutions (Queensland) for the  
respondent

WILLIAMS JA: The applicant was convicted in the District Court at Gympie on the 20th of November 2003 of the offence of dangerous operation of a motor vehicle causing death and was sentenced to three and a half years imprisonment with a five year licence disqualification.

Acting on his own behalf he filed a notice of appeal against conviction and an application for leave to appeal against sentence on the 5th of January 2004 which was a few weeks out of time. He also filed on that date an application for extension of time within which to appeal.

The applicant has appeared on his own behalf by video today and it is obvious that, because of his intellectual limitations, he has real difficulty in articulating submissions in support of his principal application. It does appear that his principal application is with respect to the sentence, though it is obvious from some of the remarks that he made in the course of his submissions that he has concerns in relation to this conviction.

He indicated in the course of his submissions that he had spoken today to a solicitor from the Aboriginal Legal Aid Service who indicated willingness to appear on his behalf if the extension of time was granted.

Primarily because of what the Court perceives to be the applicant's difficulty in formulating his submissions, it appears to us that in the interests of justice an extension of time should be granted until the 5th of January 2004. That extension of time will be in relation to both the appeal against conviction and the application for leave to appeal against sentence so that lawyers acting for him will be able to make appropriate decisions in the light of material available to them.

So the order of the Court will be: grant an extension of time within which to file an appeal against conviction and application for leave to appeal against sentence until the 5th of January 2004.

MUIR J: I agree.

MULLINS J: I agree.

WILLIAMS JA: That will be the order. Mr Gallagher, what the Court has done is granted you the extension. Now, you should get in touch with that solicitor that you spoke to earlier today and get that solicitor working promptly on the matter because it will come on for further hearing within a short period of time. Do you understand that?

APPELLANT: Yes, I do.

WILLIAMS JA: All right. Well, that completes that matter.

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