SUPREME COURT OF QUEENSLAND

CITATION:	*R v Chapman* [2004] QCA 177
PARTIES:	**R** **v** **CHAPMAN, Shane Terry** (applicant)
FILE NO/S:	CA No 71 of 2004 DC No 3387 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	28 May 2004
DELIVERED AT:	Brisbane
HEARING DATE:	20 May 2004
JUDGES:	McMurdo P and Chesterman and Atkinson JJ Judgment of the Court
ORDERS:	**1. Leave to extend time within which to file a notice of application for leave to appeal against sentence refused** **2. Leave to set aside the abandonment of the application of leave to appeal refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – PRACTICE AFTER CRIMINAL APPEAL LEGISLATION – MISCELLANEOUS MATTERS – PROCEDURE – QUEENSLAND – EXTENSION OF TIME, NOTICE OF APPEAL AND ABANDONMENT – where applicant convicted of break and enter dwelling with intent, unlawful wounding, deprivation of liberty, going armed in public and wilful damage – where applicant filed and abandoned appeal against sentence – whether prosecution made errors in assertions of facts before sentencing judge – where impugned facts would not have affected sentence *Criminal Practice Rules* 1999 (Qld), r 69
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

[1] **THE COURT:** The applicant, Shane Terry Chapman, has sought an extension of time within which to file a notice of application for leave to appeal against sentence. The sentences, in respect of which the applicant seeks the extension of time, were imposed in the District Court on 10 December 2002. He was sentenced to 6 years' imprisonment on one count of break and enter a dwelling with intent; 4 years' imprisonment for unlawful wounding; 3 years' imprisonment for deprivation of liberty; and 2 years' imprisonment each for one count of going armed in public and one count of wilful damage. Each sentence was to be served concurrently. In addition, the balance of a suspended sentence imposed on 6 March 2002, 12 months' imprisonment was activated. A declaration was made under s 161 of the *Penalties and Sentences Act* (Qld) that time spent in pre-sentence custody be deemed to be time already spent under the sentence. A recommendation was made for post-prison community based release after the applicant had served 2 years' imprisonment.

[2] On 17 April 2003, the applicant filed a notice of appeal application. The application was abandoned on 6 June 2003. Pursuant to r 69 of the *Criminal Practice Rules* 1999 (Qld), an application for leave to appeal is taken to be refused by the court when the notice of abandonment is given to the registrar. However, if the court considers it necessary in the interests of justice, the court may set aside the abandonment and reinstate the application. We would give leave to the applicant, if it be necessary, to amend his application so that it is an application to set aside the abandonment and reinstate the application.

[3] The basis of the application appears to be that the prosecution made errors in the assertions of fact made to the court at sentence, which were subsequently discovered by the applicant. In order to understand the application, it is necessary to set out a brief chronology of events.

[4] The complainant is a 29 year old mother of 4 children aged between 9 years and 22 months. She started a relationship with the applicant in January 2000 and ended the relationship within two months in March 2000. He was very aggressive and possessive towards her during the relationship. During February 2000, the complainant obtained a domestic violence order against the applicant. In December 2000 she gave birth to his child.

[5] On 6 March 2001, the applicant was convicted of unlawfully stalking the complainant whilst using/threatening violence, whilst possessing a weapon and contravening order/injunction. This offence occurred between 8 February 2000 and 1 July 2000. He was sentenced to a term of imprisonment of 15 months, suspended after having served a term of 3 months with an operational period of 3 years. On that date, he was also dealt with for a breach of suspended sentence imposed on 20 November 1998, when he had been sentenced to 3 months' imprisonment wholly suspended for a period of 2 years, on one count of unlawful use of a motor vehicle, and one count of serious assault. He was also dealt with for breach of a probation order imposed on 27 August 1999. That probation order was for 2 years and was itself imposed for breaching a probation order earlier imposed. The applicant was ordered to serve 3 months' imprisonment for the breach of suspended sentence and also for the breach of probation. Both sentences were to be served concurrently with the sentences already imposed. A breach of domestic violence order was also dealt with on that date.

[6] The applicant was due for release from custody for the sentence imposed on 6 March 2001 on 5 June 2001. Less than 2 months later, on 17 July 2001, while still subject to the operational period of the suspended sentence, the applicant was charged with the offence of going armed in public so as to cause fear. When referring to that prior offence, the learned sentencing judge said that the circumstances concerned a siege at the complainant's home.

[7] The applicant was released from prison in April 2002 in relation to other matters and had contact with the complainant again. They did not live together. During July 2002 he threatened her on various occasions as a result of his jealousy. On 15 July 2002, he sent her a text message on her mobile phone reading, "I am going to kill you". On another occasion, he sent her a text message reading, "I am going to burn you alive, you bitch". The offences, the subject of the current application, occurred on 21 July 2002 and occurred in breach of the suspended sentence imposed on 6 March 2001.

[8] The circumstances of the offences as revealed in the submissions and sentencing remarks are as follows. The complainant and the applicant were in the complainant's motor vehicle. They discussed their relationship and the applicant raised his fist and punched the windscreen of the vehicle causing the windscreen to crack from the passenger side to the middle, leaving a hole in the windscreen. This was the subject of the count of wilful damage.

[9] The complainant dropped the applicant off at his residence and went back to her own home in another suburb. Because she was afraid of the applicant, she went to a neighbour's house to call the police. She discussed with the police the possibility of obtaining another domestic violence order against the complainant. The police went with her to her home where she obtained some documentation for them. The complainant and the police left the house and went to the neighbour's house where she collected her children. The applicant, armed with a knife with a 20cm blade, entered the complainant's home through a rear window, whilst she was at her neighbour's house. She returned to her home. He waited for her in her bedroom. This behaviour formed the basis of the count of break and enter dwelling with intent.

[10] When the complainant returned to her home the applicant confronted her with a knife. He grabbed her and she fell to the ground. She kicked with her legs, he grabbed them and dragged her into the bedroom. He yelled at the children and told them to go outside. He rolled her onto her stomach on the bed and had her head in a headlock with the knife to her throat. When her neighbour rushed in, the applicant yelled at him, "If you come any closer, I'll kill her". This behaviour formed the basis of the count of deprivation of liberty.

[11] The offence of unlawful wounding occurred whilst the applicant had the knife to the complainant's throat. She put her hand up to try to protect herself from the blade. As she tried to push the knife away it cut the middle finger and left hand.

[12] While the complainant was screaming and struggling to get away from the applicant, police arrived with guns drawn. The applicant moved the knife from her throat to her back. He still had her in a headlock. The police made repeated demands for him to put the knife down. He relaxed his hold on her neck and she was able to get away and fled from the room. He then placed the knife against his own neck and the stand-off with police continued for a further 8 minutes before he dropped the knife and surrendered to police.

[13] The applicant has complained that the sentencing judge was told by the prosecution, that with regard to the offence that occurred on 17 July 2001, the confrontation with police was at the home of the complainant, when it was in fact at his residence. He has not produced any evidence in support of that assertion and it is difficult to see that this could have made any difference to the sentences imposed for offences that occurred on a later date.

[14] The applicant also complains that the sentencing judge was told by the prosecution, with regard to the count of unlawful wounding, that the applicant's tendon was severed. In support of this, he relies upon a report from the Royal Brisbane Hospital ("RBH") dated 30 September 2003, with reference to the complainant's admission to that hospital, by ambulance, on 21 July 2002.

[15] It is the case that the prosecution told the learned sentencing judge that the complainant suffered tendon damage and that the judge referred to this in the sentencing remarks. In the Schedule of Facts that were an exhibit before the court, the particulars of the offence of unlawful wounding, revealed that the complainant was taken by ambulance to the RBH. The Schedule recites that she suffered severed tendons in her left hand causing permanent damage to her hand and finger. She also had a six centimetre cut to her palm and a small cut to her right leg.

[16] The applicant asserts that on 11 March 2004, he received material in relation to a criminal compensation claim by the applicant which included a report from RBH dated 30 September 2003. It was not written by the doctor who treated her. It says, that the complainant:

> "…was found to have a 2cm laceration over the distal aspect of the left middle finger. There was bruising around the laceration. There was noted to be some numbness of the left middle finger distal to the laceration.
>
> "Xrays of the left middle finger revealed no evidence of a bony injury. … The true skin was broken, however there was no damage to any underlying tendons.
>
> "Please note the medical chart does not describe any injuries to the palm of the right or left hand."

[17] However, that is not the only medical opinion as to her injuries. The complainant's treating doctor provided a report on 25 October 2002 which says:

> "This letter certifies that I am [the complainant's] current usual treating medical practitioner and have been for the last 9 years. Prior to her injury (21/07/02) to her left hand there was no disability. Since the injury 21/07/02 (laceration to hand and middle finger) she suffers from permanent loss of function with deformity attributed to a lacerated flexor tendon of the third finger (of her left hand) with associated nerve and vascular damage causing a condition of reflex sympathetic dystropathy. This condition results in painful sensory changes which affect her every day. The duration of these symptoms is expected to be of a longstanding nature. The injury reduces her capacity to work and directly affects her current duties as a phlebotomist (blood collecting and insertion of cannulae to veins)."

[18] There is therefore a dispute as to the correctness or perhaps, more accurately, the precise meaning of the "fresh evidence" on which the applicant seeks to rely. Even

if it were to be accepted that the judge was mistaken in referring to the complainant's tendon as being severed, the question remains as to whether a correction to this would have made any difference to the sentence imposed.

[19] The crimes committed by the applicant were intended to cause and did indeed cause grave fear and distress to the complainant and others. The crimes were committed while the applicant was on a suspended sentence. He has an appalling criminal record with almost continuous offending since 1996, for anti-social offences including offences of dishonesty and violence.

[20] Even if the facts as now asserted had been placed before the sentencing judge, it would not have made any difference to the sentences imposed. The sentence of 6 years' imprisonment, with a recommendation for post-prison community based release after 2 years was not manifestly excessive. In those circumstances, the application should be refused.

Orders

[21] Leave to extend time within which to file a notice of application for leave to appeal against sentence refused. Leave to set aside the abandonment of the application of leave to appeal refused.