

# SUPREME COURT OF QUEENSLAND

CITATION: *R v WK* [2004] QCA 243

PARTIES: **R**  
v  
**WK**  
(applicant)

FILE NO/S: CA No 110 of 2004  
DC No 70 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction)

ORIGINATING COURT: District Court at Cairns

DELIVERED EX TEMPORE ON: 21 July 2004

DELIVERED AT: Brisbane

HEARING DATE: 21 July 2004

JUDGES: McMurdo P, Williams JA and Mullins J  
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. Application for an extension of time within which to appeal against conviction granted**  
**2. Time within which to appeal extended until 23 April 2004**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PRACTICE AFTER CRIMINAL APPEAL LEGISLATION – MISCELLANEOUS MATTERS – QUEENALDN – PROCEDURE – EXTENSION OF TIME, NOTICE OF APPEAL AND ABANDONMENT – where application convicted of three counts of indecent dealing – where informed solicitors on day of conviction that wanted to appeal – where appeal forms did not reach applicant in prison until day after expiration of time limit – whether an extension of time within which to appeal should be granted

COUNSEL: E Jaha (*sol*) for the applicant  
M J Copley for the respondent

SOLICITORS: John Williams & Associates for the applicant  
Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: The applicant was convicted on 12 March 2004 after a trial of three counts of indecent dealing with a girl under 17 years with a circumstance of aggravation. He was acquitted on one count. On that date he was sentenced to 18 months' imprisonment. He did not file and serve his form 26 appeal against conviction until 22 April 2004, nearly two weeks later than the prescribed time. He now seeks an extension of time within which to appeal against his conviction on a number of grounds.

Uncontested affidavit material before this Court establishes that he indicated to his solicitors on 12 March 2004 that he wished to appeal against his conviction and that he then instructed his solicitors to prepare the necessary documents. He did not receive the form 26 notice of appeal from his legal representatives until 13 April 2004, the day after the expiry of the appeal period apparently because of some unexplained delay on the part of couriers. He then immediately completed the necessary forms and returned them to his legal representatives.

Mr Copley, who appears for the respondent, very fairly, does not oppose the applicant's application, conceding that on the material presently available, it is impossible to assert that the applicant enjoys no prospect of success in the appeal.

In the circumstances, the application for an extension of time within which to appeal against conviction should be granted and the time extended until 23 April 2004.

WILLIAMS JA: I agree.

MULLINS J: I agree.

THE PRESIDENT: That is the order of the Court.

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