SUPREME COURT OF QUEENSLAND

CITATION:	*R v Seronge* [2004] QCA 389
PARTIES:	**R** **v** **SERONGE, Tylor Bryce** (applicant)
FILE NO/S:	CA No 241 of 2004 DC No 12 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence & Conviction)
ORIGINATING COURT:	District Court at Dalby
DELIVERED EX TEMPORE ON:	18 October 2004
DELIVERED AT:	Brisbane
HEARING DATE:	18 October 2004
JUDGES:	McMurdo P, Davies JA and Chesterman J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for an extension of time within which to appeal against conviction and apply for leave to appeal against sentence refused**
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 – applicant convicted of attempted arson and sentenced to 12 months imprisonment – filed application for an extension of time within which to appeal against conviction and to apply for leave to appeal against sentence – appeal more than nine months out of time and sentenced served by time of hearing appeal – whether appeal or application for leave to appeal had any prospects of success – whether application for an extension of time should be granted
COUNSEL:	The applicant appeared on his own behalf M R Byrne for the respondent
SOLICITORS:	The applicant appeared on his own behalf

Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: Mr Seronge was convicted at Dalby after a trial on 17 September 2003 of attempted arson on 29 May 1999. He was sentenced on the day of his conviction to 12 months imprisonment. On 23 July 2004 this Court's Registry received his application for an extension of time within which to appeal against his conviction and to apply for leave to appeal against his sentence. It is over nine months out of time and he has now served his sentence.

By way of explanation for this very significant delay, he states that he was told by his barrister that he could not appeal and that he is naïve and easily manipulated as to the law and was suffering from mental stress. He tells us today that he found out from other prisoners after he had been in prison for a month or so that he could appeal. He was not getting his hormone replacement therapy whilst in prison and he was not thinking clearly. Because he is illiterate it took him some time to make enquiries. For these reasons his application was well out of time.

He contends that the sentence is manifestly excessive and that the conviction is unsafe and unsatisfactory. Mr Seronge has sent a letter to the Registry in which he contends that he is innocent of the crime for which he is convicted and says that he was manipulated by his barrister and did not get the opportunity to call witnesses to prove his innocence. He says

that the evidence was unsatisfactory to prove that he committed the crime. Two of the witnesses lied: his ex-girlfriend at the time gave false evidence out of revenge and his sister wrongly claimed that he had committed the crime of arson.

The complainant's barrister at trial, Mr Davies, has filed an affidavit and has given evidence by telephone link from Kingaroy where he is conducting a criminal trial today. His evidence is to the following effect. He first had a one hour conference with Mr Seronge some days prior to the commencement of the Dalby sittings in the presence of a clerk, Ms Lesley Zeller from Ross Finlayson & Co, his instructing solicitors. The conference lasted about an hour.

He spent some time going through the many aspects of the jury trial process with Mr Seronge because he was aware of his illiteracy. He formed the view that Mr Seronge was unfocused in his instructions and they discussed at length whether or not Mr Seronge should give evidence and or alternatively call witnesses. Mr Davies made it clear that it was a matter for Mr Seronge ultimately but advised Mr Seronge that, bearing in mind his poor oral presentation, it was Mr Davies' view that it was better that he not give evidence.

Mr Seronge gave Mr Davies instructions to speak to the Crown Prosecutor about what sentence he could expect if he pleaded guilty. Mr Davies did so and a few days later advised Mr Seronge by telephone that the Crown Prosecutor had indicated

that if Mr Seronge pleaded guilty, he would seek a fully suspended sentence. Mr Seronge was concerned about a term of imprisonment because of his personal circumstances. It appears that Mr Seronge, although born a female, was and is living as a male.

Mr Davies advised Mr Seronge that the case was reasonably strong and he should think carefully before going to trial because of the risk of actual imprisonment. He told Mr Seronge to think about his plea and to phone him in a few days. A day or two later Mr Seronge telephoned Mr Davies and advised him he would proceed to trial contrary to Mr Davies' advice.

Mr Davies attests that at all times he conducted the trial in accordance with Mr Seronge's express instructions and that he took care not to manipulate him. On the day of the trial, prior to its commencement, Mr Seronge gave Mr Davies written instructions that he wished to plead not guilty, that he had been told the case against him was reasonably strong and that he understood that if he pleaded he had a prospect of having a sentence of imprisonment suspended. He appreciated in pleading not guilty he was more at risk of a term of actual imprisonment which he would have to serve partially in a male prison. Those hand-written instructions also included the following, "I do not want to give evidence in my trial. This is my choice. I understand some pros and cons of that decision which have been explained to me. I have given these

instructions entirely of my own free will without any pressuring."

Mr Seronge told Mr Davies that there was a witness or perhaps a husband and wife who could support his version of events. The potential witness or witnesses attended Court one morning before Court commenced. They were briefly proofed by Mr Davies' instructing clerk and Mr Davies met with them. It quickly became apparent to him that the evidence of this witness or witnesses would undermine Mr Seronge's case and Mr Seronge gave Mr Davies instructions not to call this witness or witnesses. These instructions were taken after the signed written instructions and were in oral terms only.

Mr Davies discussed all matters as to the conduct of the case fully with Mr Seronge and acted on those instructions. After his conviction, Mr Davies says he may have explained to Mr Seronge that in his view the prospects of an appeal against conviction or sentence were not promising, that he could not recommend an appeal and that he doubted whether Legal Aid would be granted to fund an appeal. His usual practice is also to tell a convicted person in such circumstances that he could still appeal without Legal Aid but would have to represent himself. He is confident that he did not tell Mr Seronge that he could not appeal.

I accept Mr Davies' account of his dealings with Mr Seronge, which are consistent with Mr Seronge's written instructions and seem plausible. It follows that Mr Seronge has not

established that he was given legal advice that he could not appeal nor that there was any irregularity in the conduct of his defence so as to constitute a miscarriage of justice.

I turn now to the evidence against Mr Seronge at his trial for this is relevant as to whether there would be any point in granting an extension of time in any case. Mr Seronge was charged with wilfully and unlawfully setting fire to a container of flammable liquids which was so situated that the dwelling house in which his brother and members of his family resided was likely to catch fire from it on 29 May 1999.

The complainant did not approve of Mr Seronge's lifestyle. They had not spoken for many years. With this background, in 1999, Mr Seronge, the complainant and another brother and their respective families were all living in a small town, Warra, with a population of only about 100 people. Understandably there was a great deal of tension in those circumstances between the family members and this provided some evidence of motive.

At about 1.30 a.m. on 29 May 1999 the complainant gave evidence that he got out of bed because he heard his dog barking. He went to investigate and found a plastic container on fire near the front of his house. He knocked the container out of the way. There was soot damage to the front of the house and some charring of telephone conduit attached to the house. Inside the container was a mixture of petrol and mineral turpentine.

Mr Seronge's partner at the time of the fire gave evidence that early on 29 May 1999 Mr Seronge admitted by telephone to her that he lit a fire in front of his brother Warren's house and he asked her to collect him from the house. Mr Seronge's sister who lived in Dalby and was the only member of the family with which he then got on, gave evidence that he told her some time after the fire that he was responsible for lighting it. The credit of these witnesses was tested by Mr Seronge's barrister at trial in cross-examination but they did not alter their position.

The applicant did not give or call evidence.

To succeed in this application, he must first demonstrate some good reason for filing the application out of time. He has not done so in my view, but in any case nor has he demonstrated any realistic prospects of success on an appeal should the extension of time be granted. There was ample evidence to support the jury's verdict of guilty.

As to sentence, the applicant was 36 years at the time of the offence and 40 at sentence, so that he was not an immature youth. He had previous convictions for aggravated assault and wilful damage in 1987, although he had never previously been imprisoned. The serious aspect of the offence was that it concerned the burning of a dwelling house in which people were then asleep so that there was a real danger to the lives and health of those people. In those circumstances the sentence imposed does not seem to have been manifestly excessive.

Mr Seronge has not demonstrated any sound reason for the granting of the application for an extension of time. It should be refused.

DAVIES JA: I agree.

CHESTERMAN J: I agree.

THE PRESIDENT: That is the order of the Court.
