

# SUPREME COURT OF QUEENSLAND

CITATION: *Kasser v Haines* [2004] QCA 433

PARTIES: **GEORGE KASSER**  
(applicant)  
v  
**KERRIE-SUE ANNE HAINES**  
(respondent)

FILE NO/S: CA No 403 of 2003  
DC No 1279 of 2003

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 15 November 2004

DELIVERED AT: Brisbane

HEARING DATE: 15 November 2004

JUDGES: McMurdo P, McPherson JA, Philippides J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the order made

ORDER: **Application dismissed**

CATCHWORDS: COURT OF APPEAL – APPLICATIONS FOR LEAVE TO APPEAL

COUNSEL: The applicant appeared on his own behalf  
D L Meredith for the respondent

SOLICITORS: The applicant appeared on his own behalf  
Director of Public Prosecutions (Qld) for the respondent

McPHERSON JA: This is an application under s 118(3) of the *District Court Act* for leave to appeal against a decision of Judge Samios dismissing an appeal from a decision of a Magistrate who convicted the applicant of a charge of unlawfully stalking a woman who, at the time in question, was working at a suburban departmental store. She was a complete

stranger to the applicant, in every sense, apart from the fact that he had previously been found guilty of stalking her on an earlier occasion.

I should say, at the outset, that the appeal has no discernible prospect of success even if such application for leave to appeal were to be allowed. The applicant also has the additional obstacle to overcome that the application for leave was filed and made some two weeks or more after the time for appealing from the decision had run out.

The application has already been before this Court on one prior occasion in May this year when it was struck out because of the applicant's failure to appear in support of it. He was, however, we understand, at the time, undergoing treatment and that explains his absence on that occasion. It does not affect his present application before us.

The problem for the applicant, regarding him as a person who wishes to appeal, is that the decision against which he is seeking leave to appeal was essentially one of fact. It depended on the Magistrate's assessment, on one hand, of the credibility of the various witnesses for the prosecution, including the complainant lady herself, and, on the other, of the applicant himself who gave evidence in his defence at the hearing.

The Magistrate accepted the witnesses for the prosecution and gave reasons for doing so which have not been specifically

challenged before us. In those circumstances, the question before Judge Samios was, as his Honour rightly perceived, whether on the evidence it was open to the Magistrate to be satisfied beyond reasonable doubt of the applicant's guilt of the offence charged. Having, for the reasons which the Magistrate gave, satisfied himself of that evidence, there was no occasion for Judge Samios to set aside the conviction.

In this Court, to which there is no right of appeal but only a discretionary power in the Court to grant leave to appeal, no justification has been shown to us for concluding that either of the decisions in the courts below was wrong. There is nothing in this case to suggest there has been any miscarriage of justice and nothing has been referred to to demonstrate that there might have been.

In these circumstances the application for leave to appeal must fail and I would dismiss it.

THE PRESIDENT: I agree.

PHILIPPIDES J: I agree.

THE PRESIDENT: The application for an extension of time to file an application for leave to appeal is refused.

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