

COURT OF APPEAL

McPHERSON JA

CA No 89 of 2004

THE QUEEN

v.

WILLIAM MONTAGUE MORRIS

Applicant

BRISBANE

..DATE 15/11/2004

ORDER

MR A MAHER (instructed by Martinez Quadrio) for the applicant
MR M J COPLEY (instructed by Director of Public Prosecutions
(Queensland)) for the respondent

McPHERSON JA: The applicant was convicted after a trial in the District Court of operating a vehicle dangerously contrary to s 328A of the Criminal Code. He appealed to the Court of Appeal, which dismissed his appeal. (See *R v. Morris* [2004] QCA 408.)

Among the various grounds of fact and law, which were canvassed on that appeal, was one of constitutional law. It arose in this way. The offence charged against the applicant of dangerous operation of a light aircraft was by flying dangerously over his estranged wife's house in Biloela. There is a Commonwealth regulation, Regulation 157, made under the *Civil Aviation Act 1988*, which prohibits and penalises flying under 1,000 feet over a populous place. The applicant submitted that s 328A was inconsistent with this regulation and so was invalidated by the operation of s 109 of the Constitution.

Before the Court of Appeal this submission failed. It seemed to those members of the Court of Appeal, of whom I was one, that it was most improbable that Regulation 157 was intended to be a complete and exclusive or exhaustive statement of all the law in force criminalising conduct between ground level and 1,000 feet above it.

The applicant now wishes to carry the challenge to his conviction on to the High Court and to do so only on the constitutional ground to which I've referred. For this he needs from that Court special leave to appeal. Pending that application he has applied to stay the warrant to commit him to prison to serve the two months of the 18 month prison sentence that was not suspended by the primary Judge. An application for special leave has been lodged, or is about to be lodged, and it will be six to 12 months before it is heard.

The submissions made by Mr Maher on behalf of the applicant candidly refer to the difficulty of obtaining a stay for as long as that; but before me this morning the application has been moderated to the point of submitting that what is required is no more than a further stay for two to three weeks pending an application to the High Court for bail to enable the applicant to avoid commencing his sentence of imprisonment before the application for special leave is heard by the High Court.

In my view, although it seems to me that there is probably little reason to suppose that the constitutional point will succeed, it will not overtly frustrate the purposes of justice if the stay of the warrant of arrest which is now in force, or has only recently expired, were continued for a period ending on or about the 6th of December this year, so as to enable the application for bail to be made to their Honours in the High Court. I will, accordingly, order that the warrant for the

arrest of the applicant be stayed, or further stayed, until the end of 6 December this year.

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McPHERSON JA: That will be the order of the Court.

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