

SUPREME COURT OF QUEENSLAND

CITATION: *R v Rout* [2005] QCA 9

PARTIES: **R**
v
ROUT, Adam Troy
(applicant)

FILE NO/S: CA No 304 of 2004
DC No 54 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence & Conviction)

ORIGINATING COURT: District Court at Bundaberg

DELIVERED EX TEMPORE ON: 7 February 2005

DELIVERED AT: Brisbane

HEARING DATE: 7 February 2005

JUDGES: de Jersey CJ, Williams JA and Chesterman J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. Application for extension of time within which to appeal against conviction refused**
2. Application for extension of time within which 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 – QUEENSLAND – PROCEDURE – EXTENSION OF TIME, NOTICE OF APPEAL AND ABANDONMENT - applicant convicted of two counts of unlawful wounding, assault occasioning bodily harm whilst armed with an offensive instrument and grievous bodily harm – applicant sentenced to four years imprisonment - 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
S G Bain for the respondent

SOLICITORS: The applicant appeared on his own behalf

Director of Public Prosecutions (Queensland) for the
respondent

THE CHIEF JUSTICE: Well, Mr Rout, the order of the Court at this stage is that your application be refused insofar as it seeks an extension of time within which to appeal against conviction.

...

WILLIAMS JA: Arising out of events which occurred at a family barbecue on the 15th of March 2003 the applicant was charged with a number of serious offences. He pleaded not guilty and the matter went to trial. He was ultimately convicted by the jury of the following offences:

Count 2 - unlawful wounding which involved an injury to the left hand of the complainant.

Count 4 - unlawful wounding which involved an injury to the chin of the complainant.

Count 5 - assault occasioning bodily harm whilst armed with an offensive instrument which involved hitting the complainant to the region of the back and shoulder with a piece of wood.

Count 6 - grievous bodily harm which involved hitting the complainant with a piece of wood causing a fracture to

the forearm as the complainant raised his arm to defend himself.

On counts 2, 4 and 6, the applicant was sentenced to four years' imprisonment and on count 5 to three years' imprisonment, the sentences to be served concurrently. Those sentences were imposed on 27 July 2004.

On the 2nd of September 2004, some six days out of time, the applicant filed an application for an extension of time within which to appeal. At that time the documents contained the following grounds:

- (1) the verdict was unreasonable;
- (2) the learned trial Judge erred in commenting to the jury that the complainant's injury was unlikely to have been sustained from a struggle on the ground;
and
- (3) the sentence was manifestly excessive.

When the applicant lodged his outline of argument on the 19th of January 2005, additional matters were raised which, prima facie, went to the issue of conviction.

On the application for extension of time being called on for hearing today the applicant appeared in person by video and after some exchanges between the Bench and the applicant it

became clear that the applicant only wished to appeal against his sentence.

He indicated willingness to abandon the appeal insofar as it referred to conviction.

In the circumstances the Court ordered that there be a refusal of an extension of time to appeal against conviction. There followed further submissions with respect to the issue of sentence.

The offences, as indicated by the brief outline which I have already given, were serious and they were made more culpable because of the fact, as recorded by the learned sentencing Judge, that the applicant had previous convictions for a number of assaults, malicious damage, and possession of an offensive implement.

It is also clear from the summing-up and the sentencing remarks that there were two quite separate episodes which resulted in the injuries sustained by the complainant, though the episodes were not all that far apart in point of time. One incident (counts 2 and 4) involved the use of a knife. The other incident involved the use of the piece of wood.

A sentence of four years' imprisonment for those offences, particularly that of grievous bodily harm, in the context, is well within the appropriate range. In the circumstances, I am not persuaded that the applicant has demonstrated any

reasonable prospects of successfully appealing against the sentence that was imposed and, in the circumstances, I would refuse the application for an extension of time for leave to appeal against sentence.

THE CHIEF JUSTICE: I agree.

CHESTERMAN J: I agree.

THE CHIEF JUSTICE: The application is refused.
