SUPREME COURT OF QUEENSLAND

CITATION:	*Stubbs v Commissioner of Police* [2005] QCA 23
PARTIES:	**STUBBS, Niall David** (applicant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO/S:	CA No 378 of 2004 DC No 3693 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	11 February 2005
DELIVERED AT:	Brisbane
HEARING DATE:	11 February 2005
JUDGES:	de Jersey CJ, Jerrard JA and Mackenzie J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDERS:	**1. Refuse application for an order for the production of medical records and the like in relation to past treatment** **2. Refuse application for leave to appeal against the order of the District Court**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL-PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF THE COURT – GENERALLY – where applicant pleaded guilty – where appeal was incompetent because s 222 *Justices Act* 1886 (Qld) precludes appeal against conviction where applicant pleaded guilty – where 17 years lapsed between conviction and application for extension of time – where applicant contented that at the time he was not fit to plead because of psychiatric disorder – whether appeal should be allowed against decision refusing extension of time to appeal conviction
COUNSEL:	The applicant appeared on his own behalf R Martin SC for the respondent
SOLICITORS:	The applicant appeared on his own behalf

Director of Public Prosecutions (Queensland) for the respondent

THE CHIEF JUSTICE: On the 8th of September 1987, the applicant pleaded guilty in the Magistrates Court to the offence of aggravated assault. The charge was that on the 4th of September 1987, he unlawfully assaulted one Stanolsky while armed with a knife.

A conviction was recorded, and he was released on a two year good behaviour bond.

The charge arose from a traffic accident. The vehicle drive by the applicant collided with the rear of a preceding vehicle in George Street, Brisbane.

The complainant alighted from his vehicle and approached the driver's side of the applicant's vehicle. When the complainant, who according to the police material was not acting aggressively, was about half a metre away, the applicant displayed a knife in his direction causing the complainant to withdraw and report the incident to a police officer who happened to be in the following vehicle.

The applicant's contention is that at the time, he was not, because of psychiatric disorder, fit to plead, or criminally responsible for his actions.

He was then under the guardianship of his parents. His problems flowed from serious injuries sustained in a motor vehicle accident in May 1984.

By documentation filed in the District Court on the 14th of October 2004, the applicant sought an extension of time for the filing of a notice of appeal against his conviction, filed under section 222 of the Justices Act. That section required the service of a notice of appeal within one calendar month of the decision to be challenged.

The application was heard in the District Court on the 22nd of October 2004. The learned Judge dismissed the application on two grounds. First, his Honour held that the application was incompetent because of section 222, sub-section 2, paragraph (e), of the Justices Act which provides that, "except where the sole ground of appeal is that the fine, penalty, forfeiture or punishment is excessive or inadequate, as the case may be, no appeal shall lie under this section where the defendant pleaded guilty, or admitted the truth of the complaint".

Second, and really alternatively, his Honour held that the material before him did not disclose that as at the time of his pleading guilty, the applicant suffered any acute psychotic state depriving him of the capacity to plead.

As to the lapse of 17 years between conviction and the application for extension of time, it emerged the applicant's

interest in expunging the conviction recorded 17 years earlier, was enlivened only in recent times by his view that he may need to obtain a suitability card in relation to community work with children.

The applicant now seeks leave to appeal against the order of the District Court. He needs leave because of section 118 of the District Court Act. He also seeks an order for the production of medical records and the like in relation to his past treatment and condition.

In my view, leave should be refused because the judgment of the learned District Court Judge was plainly right.

Having pleaded guilty in the Magistrates Court, the applicant was precluded by the clear terms of section 222, sub-section 2, paragraph (e) of the Justices Act, from challenging his conviction by reliance on that section in the District Court.

In any event, assuming a jurisdiction nevertheless to go behind the plea, there was no evidence before the Judge which warranted a conclusion that as at 7th September 1987, in particular, the applicant's mind was disordered to the point where he was of unsound mind in law, or that as at 8th September 1987, in particular, he should have been regarded as unfit to plead. I say that, notwithstanding evidence about his vulnerable condition at other times, as covered by the various medical reports before the District Court. The point taken by

the District Court was that his condition at the critical times was not addressed by the evidence before that Court.

Unsoundness of mind, or unfitness to plea, did not necessarily follow from his parents being his guardian, as he would have contended here this morning. Further, whether or not the guardian should have been notified following the laying of the charge, an issue apparently not ventilated in the District Court, was not an issue which would imperil the conviction such as to warrant a grant of leave in this Court.

Finally, there is the extraordinarily long period of delay which in my view has been inadequately explained by the recent consideration of his possibly needing a suitability card.

I would, accordingly, refuse both applications.

JERRARD JA: I respectfully agree. The New South Wales Court of Criminal Appeal recently held in the matter of the Queen against Rivkin, Volume 59 of the New South Wales Law Reports, page 284 to 297, that evidence of a reduction in a defendant's capacity to meet the requirements of fitness to plead, or stand trial, which reduction fell short of denying that defendant the necessary capacity to understand and follow the proceedings, does not warrant appellant intervention, and I respectfully agree.

MACKENZIE J: I agree.

THE CHIEF JUSTICE: The orders are as I have indicated.
