SUPREME COURT OF QUEENSLAND

CITATION:	*Dore & Ors v Penny* [2005] QCA 150
PARTIES:	**EDMUND PAUL DORE** (appellant/applicant) **ROBERT JOHN DORE** (appellant/applicant) **GARY JAMES DORE** (appellant/applicant) **v** **STEPHEN FRACIS PENNY** (respondent/respondent)
FILE NO/S:	CA No 368 of 2004 CA No 366 of 2004 CA No 367 of 2004 DC No 200 of 2004 DC No 201 of 2004 DC No 202 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Cairns
DELIVERED EX TEMPORE ON:	11 May 2005
DELIVERED AT:	Brisbane
HEARING DATE:	11 May 2005
JUDGES:	Williams and Jerrard JJA and Wilson J Judgment of the Court
ORDER:	**1. In CA No 368 of 2004: Application for leave to appeal refused** **2. In CA No 366 of 2004: Application for leave to appeal refused** **3. In CA No 367 of 2004: Application for leave to appeal refused**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – PLEAS – GENERAL PLEAS – PLEAS OF GUILTY – OTHER CASES – where applicants pleaded guilty to an offence under the *Integrated Planning Act* 1997 and other offences under the *Land Act* 1994 – appeal against convictions pursuant to s 222 of the *Justices Act* 1886

	dismissed in the District Court – where the appeal to the District Court was incompetent pursuant to s 222(2)(e) *Justices Act* 1886 because the applicants pleaded guilty in the Magistrates Court – whether there is a valid appeal or application for leave to appeal to Court of Appeal
	Integrated Planning Act 1997 (Qld) *Land Act* 1994 (Qld) *Justices Act* 1886 (Qld) s 222
	Long v Spivey [2004] QCA 118; CA No 400 of 2003, 23 April 2004, cited
COUNSEL:	The applicants appeared on their own behalf J A Logan SC, with D Grealy, for the respondent
SOLICITORS:	The applicants appeared on their own behalf C W Lohe, Crown Solicitor for the respondent

WILLIAMS JA: The applicants, Edmund Paul Dore, Robert John Dore and Gary James Dore, pleaded guilty in the Tully Magistrates Court to an offence under the Integrated Planning Act 1997 in relation to the clearing of trees on their property and other offences under the Land Act 1994 in relation to the clearing on a road.

They were each fined with respect to the offences but convictions were not recorded. Each of the applicants purported to appeal against the convictions pursuant to section 222 of the Justices Act 1886. That matter came on before Judge Bradley in Cairns and as was pointed out in her reasons for judgment the applicants faced a difficulty in that section 222 (2)(e) in effect provided that no appeal should lie under that section where the defendant pleaded guilty except where the sole ground of appeal was that the punishment was excessive.

This Court has on numerous occasions indicated that section 222 of the Justices Act cannot provide an avenue of appeal against conviction. The most recent authority in this Court is Long v Spivey [2004] QCA 118. The applicants have now sought leave pursuant to section 118 of the District Court Act to appeal against the decision of Judge Bradley. Because the appeal was incompetent there can be no valid appeal or application for leave to appeal to this Court. In consequence, this Court has no option but to refuse leave in the circumstances.

In Long v Spivey I did refer to the circumstance that since the repeal of section 209 of the Justices Act the remedy available to a person who pleaded guilty and wished to submit that the plea of guilty was to an offence which was not known to the law or was a plea that was not freely and voluntarily made is pursuant to part 5 of the Judicial Review Act 1991.

It may be that an extension of time would now be required to enable these applicants to have the matter reviewed pursuant to those provisions. Extensive material has been placed before this Court in support of a submission that the matters with which the applicants were initially charged were not offences recognised by the law or were not appropriately particularised to establish an offence.

In those circumstances it does appear to this Court that the material sought to be relied on by the applicants should be assessed on the merits and because of that it does appear to

this Court (though, of course, it cannot bind an exercise of discretion by a single Judge of the Supreme Court) that it is an appropriate case in which to grant any necessary extensions of time to enable the matter to be considered on the merits.

I would also point out to the applicants that the application pursuant to the Judicial Review Act in the first instance is made to a single Judge of the Supreme Court and that could be brought before a Judge of the Supreme Court in either Cairns or Townsville without involving them in the more expensive exercise of coming to Brisbane; but beyond that it is not appropriate for this Court to make any further comment about the merits or future conduct of litigation. For those reasons, which are the reasons of the Court, the three applications for leave to appeal are refused.
