SUPREME COURT OF QUEENSLAND

CITATION:	*R v Scandolera* [2005] QCA 193
PARTIES:	**R** **v** **SCANDOLERA, Darren Angelo Darwin** (applicant)
FILE NO/S:	CA No 76 of 2005 DC No 108 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Conviction)
ORIGINATING COURT:	District Court at Cairns
DELIVERED EX TEMPORE ON:	7 June 2005
DELIVERED AT:	Brisbane
HEARING DATE:	7 June 2005
JUDGES:	de Jersey CJ, McPherson and Keane JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Application for an extension of time within which to appeal against conviction refused** **2. Application for leave to call fresh evidence refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PRACTICE: AFTER CRIMINAL APPEAL LEGISLATION – MISCELLANEOUS MATTERS – QUEENSLAND – PROCEDURE – EXTENSION OF TIME, NOTICE OF APPEAL AND ABANDONMENT – where there was a three and half year delay in bringing application – where applicant contended he was not told of the time limit for appealing – where applicant contended he had to collect material by means of the Freedom of Information process – whether application for an extension of time within which to appeal against conviction should be allowed CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION RECORDED ON PLEA OF GUILTY – GENERAL PRINCIPLES – where

	applicant contended he was pressured by legal representatives into pleading guilty – whether there was sufficient reason to go behind the plea of guilty
	Meissner v R (1995) 184 CLR 132, applied
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 (Queensland) for the respondent

THE CHIEF JUSTICE: The applicant pleaded guilty to an assault occasioning bodily harm committed in September in the year 2000 upon a custodial officer while the applicant was a prisoner at the Lotus Glen Correctional Centre.

On the 18th of September 2001, the applicant was admitted to 12 months probation. That was a lenient response in that the applicant had in 1994 been convicted in the Northern Territory of manslaughter and sentenced to seven years imprisonment. The learned sentencing Judge took the view that further imprisonment would be counter-productive.

It was not until the 23rd of March 2005 that the applicant filed his application for an extension of time within which to appeal against conviction. The basis of the application is that he was pressured by his legal representatives into pleading guilty. He has a related application for leave to call fresh evidence.

The applicant has not satisfactorily explained his delay in making this application. His claim that he was not told of

the time limit for appealing obviously cannot account for three and a half years delay, neither can the collecting of material by means, for example, of the Freedom of Information process.
On 6 September 2004, he brought an unsuccessful application to reopen the matter and the Judge then informed him that the appropriate course was to apply for an extension of time. Yet even then, he delayed three and a half months.

Were an extension nevertheless granted, the applicant's prospects would, I believe, be most unpromising. He says he pleaded guilty on the advice of his legal representatives that his claims would not prevail over the evidence of the custodial officers.

The applicant does not assert that the advice was improper or misleading and there is no basis for thinking he was subjected to undue pressure. The reality appears to be that he was given informed advice that there was a real prospect of conviction and further imprisonment, and in light of that freely chose to plead guilty.

We have before us an affidavit from the applicant's then solicitor, Mr Bovey, which confirms the regularity of the process. There is nothing to suggest the applicant's plea of guilty was anything but freely entered on an informed basis. (See *Meissner v R* (1995) 184 CLR 132 at 141 and 157.)

The evidence upon which the applicant would seek to rely were

the plea set aside hinges on the account of a nurse, L H Ahmet. While she could give evidence of the demeanour of the custodial officers which could bear on the proportionality of the respective shows of violence, the critical fact remains that Nurse Ahmet did not on her accounts witness the incident.

I would refuse the applications principally because the applicant has offered no satisfactory explanation for a very substantial period of delay, and there is no sufficient reason to go behind his freely entered, and apparently informed, plea of guilty.

McPHERSON JA: I agree.

KEANE JA: I agree.

THE CHIEF JUSTICE: The applications are refused.