

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Stuart* [2005] QCA 215

PARTIES: **R**  
v  
**STUART, Craig Edward**  
(applicant)

FILE NO/S: CA No 424 of 2004  
DC No 1882 of 2003

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application - Criminal

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 17 June 2005

DELIVERED AT: Brisbane

HEARING DATE: 17 June 2005

JUDGES: McPherson and Keane JJA and White J  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **A warrant for the apprehension of the applicant made on 3 May 2005 lie on the file until the determination of the applicant's application for special leave to appeal to the High Court of Australia, or until that application is abandoned, or until further order**

CATCHWORDS: CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - WARRANTS, ARREST, SEARCH, SEIZURE AND INCIDENTAL POWERS - WARRANTS - WARRANTS FOR ARREST AND DETENTION - EXECUTION - where applicant convicted after trial of assault occasioning grievous bodily harm - where applicant sentenced to three months imprisonment - where applicant's appeal against conviction to the Court of Appeal dismissed - where applicant lodged application for special leave to appeal to the High Court - whether warrant for arrest of applicant should be ordered to lie on the file until the outcome of the application for special leave is known

*Marotta v The Queen* (1999) 73 ALJR 265, cited  
*R v P; ex parte Attorney-General* [2002] QCA 436; CA  
No 172 of 2002, 17 October 2002, followed

COUNSEL:           A J Glynn SC for applicant  
                      M J Copley for respondent

SOLICITORS:        Welldon Zande & Reddy (Petrie) for applicant  
                      Director of Public Prosecutions (Queensland) for respondent

KEANE JA: On 13 December 2004, the applicant was convicted after a trial of assault occasioning grievous bodily harm. He was sentenced to three months imprisonment with twelve months probation thereafter.

He appealed to this Court on the ground that the learned trial Judge had misdirected the jury in relation to the operation of Section 23 of the Criminal Code. That appeal was dismissed on 3 May 2005. The applicant had then served ten days of his sentence prior to the grant of bail to him pending the hearing of his appeal.

Upon the dismissal of his appeal, an order was made for an issue of a warrant for his apprehension, but it was further ordered that the warrant remain on the court file for a period of two days. On 5 May 2005, the Court ordered that the warrant remain on the Court file until 24 June 2005 or further order in anticipation of an application for special leave to appeal to the High Court on the dismissal of the applicant's appeal to this Court.

On 30 May 2005, the applicant filed an application for special leave to appeal to the High Court. It appears that the application for special leave may be heard in September 2005 at the earliest.

The applicant now seeks an order that the warrant lie on the file until the outcome of his application for special leave to appeal to the High Court. In my opinion, that application should be granted.

The power of this Court to make an order of the kind sought by the applicant is not in doubt: see *R v P; ex parte Attorney General* [2002] QCA 436; CA No 172 of 2002, 17 October 2002.

The applicant was on bail pending both his trial and his appeal. There is no suggestion that he is now likely to abscond. The applicant's solicitor has undertaken to advise the Court if his retainer is discharged or if the application for special leave is abandoned or refused within two working days of such event occurring.

If the warrant were to be executed now, the applicant would spend the full term of his sentence, insofar as it involves actual imprisonment, prior to the hearing of his application for special leave to appeal to the High Court. It is clearly undesirable that this should occur having regard to the possibility that his conviction may be quashed: see *Marotta v The Queen* (1999) 73 ALJR 265 at 267.

While the applicant has no appeal presently on foot and indeed no present right of appeal, the order which the applicant seeks is justified in the exceptional circumstances of this case in order to ensure that any order which the High Court

may be disposed to make is not rendered nugatory by an order of this Court.

In my opinion this Court should order that the warrant for the apprehension of the applicant made on 3 May 2005 lie on the file until the determination of the applicant's application for special leave to appeal to the High Court of Australia, or until that application is abandoned, or until further order.

McPHERSON JA: Yes, I agree.

WHITE J: I agree.

McPHERSON JA: The order will be made in the terms outlined by Justice Keane.

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