

SUPREME COURT OF QUEENSLAND

CITATION: *R v Ramsay* [2010] QCA 81

PARTIES: **R**
v
RAMSAY, Dean Gordon Wilson
(applicant)

FILE NO/S: CA No 29 of 2010
DC No 241 of 2009
DC No 245 of 2009

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Ipswich

DELIVERED EX TEMPORE ON: 9 April 2010

DELIVERED AT: Brisbane

HEARING DATE: 9 April 2010

JUDGES: McMurdo P, Holmes and Muir JJA,
Separate reasons for judgment of each member of the Court,
each concurring as to the orders made

ORDERS: **1) Application for extension of time granted**
2) Time to lodge application for appeal against sentence extended to 22 February 2010

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where applicant sentenced to five years imprisonment for armed robbery – where applicant committed the offence whilst on parole – where applicant ordered to serve out the balance of his first four year term of imprisonment – where applicant also subject to a further eight months imprisonment for non-payment of fines – where five year sentence ordered to be served cumulatively with the two earlier terms of imprisonment – where applicant found it difficult to comply with court procedures and deadlines – where there is some merit to the application for leave to appeal against sentence – whether application for extension of time should be granted

R v Tait [1999] 2 Qd R 667; [\[1998\] QCA 304](#), cited

COUNSEL: The applicant appeared on his own behalf
B J Power for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the
respondent

THE PRESIDENT: Justice Holmes will deliver her reasons first.

HOLMES JA: On 7 August 2009 the applicant was convicted on his own plea of guilty on one count of armed robbery, one count of burglary and one count of stealing. He was sentenced to five years imprisonment on the armed robbery, 12 months imprisonment on the burglary count, and six months imprisonment in respect of the stealing. All of those sentences were concurrent, but they were ordered to run cumulatively with the sentence imposed by the District Court in October 2006, of four years imprisonment for offences of armed robbery with actual violence and robbery with violence, attempted robbery and stealing. He had been released on parole on 3 October 2008, about a month before committing the armed robbery and stealing which are the subject of the present application; the burglary offence was committed before the earlier term of imprisonment.

On 22 February 2010, he filed an application for an extension of time to appeal the sentences imposed on 7 August 2009, about five months out of time.

On an application for an extension of time, the Court will consider whether there is any good reason shown to account for the delay and whether it is in the interests of justice to grant the extension; the latter consideration may involve some assessment of whether the appeal seems to be a viable one: *R v Tait* [1999] 2 Qd R 667.

The applicant explains his delay as follows: he did not initially know that there was any time limit within which to lodge an application for leave to appeal. In mid-November 2009, he contacted Legal Aid and was told that he was by then out of time, but could lodge an application for an extension. He received the necessary forms at the end of November but did not understand how to fill them out. He got more advice in mid-

December but still could not comprehend what was required. He next contacted Legal Aid in mid-February and at that stage got sufficient assistance to fill out the forms.

The applicant was 22 years old when he was sentenced. The armed robbery charge involved his using a butter knife, brandished at waist height, to rob a bottle shop. He apologised as he committed the robbery, in which he took \$3,000 in cash and some beer. He surrendered himself to police a week later and admitted to committing the robbery and the less serious dealing and burglary offences. He was remanded in custody for being in breach of his parole and remained in custody until he was sentenced.

Given that the applicant had spent only something of the order of a week at large after breaching his parole by the robbery and stealing offences, one would expect his full-time release date on the 23 January 2006 sentence to be somewhere around 1 February 2010. The learned Judge in sentencing, as she was required to do by section 156A of the *Penalties and Sentences Act 1992* made the sentence she imposed cumulative on the earlier sentence, and then ordered that the applicant be eligible for parole after serving 16 months of the five year term. However, it appears she was informed that the applicant's full-time discharge date was 19 September 2010, and set the eligibility date 16 months after that, on 18 January 2012.

The discharge date may well have been right, but it was not the date relevant to the earlier sentence; Mr Power, in his helpful submissions here, explained that the extended discharge date appears to have been a result of an extension of the applicant's sentence by eight months consisting of default periods of imprisonment on unpaid fines. It is not clear whether that was explained in the submissions before the learned sentencing Judge; at any rate she proceeded on the basis that 19 September 2010 was the full time discharge date for the earlier term of imprisonment imposed by the District Court and set the parole eligibility date accordingly. It seems that that may have been an error and it may be that

her Honour, had she been properly informed, would have chosen to make the default period of imprisonment concurrent with the sentence she was imposing.

In addition to that issue, as Mr Power again helpfully identifies in his submissions, there may be a question as to whether the totality principle has been sufficiently recognised in the sentence, the net effect of which was that the applicant, who was 17 when the first set of offences was committed, or started, would face an effective period of imprisonment of some nine years and eight months, of which he was required to serve a minimum of six years.

The delay in this case is not entirely satisfactorily explained, but I would accept that the applicant was unrepresented, unused to dealing with paper work of the kind he was required to complete and found it difficult to comprehend the instructions he was given. There is reason to suppose that there may be some merit to the proposed application for leave to appeal against sentence. I would grant the application and extend time to 22 February 2010 when the applicant filed the notice of application for leave to appeal.

THE PRESIDENT: I agree.

MUIR JA: I agree.

THE PRESIDENT: The orders are as proposed by Justice Holmes, that is, the application for an extension of time is granted and time is extended to 22 February 2010.