

SUPREME COURT OF QUEENSLAND

CITATION: *R v Manning* [2010] QCA 177

PARTIES: **R**
v
MANNING, John Frederick
(applicant)

FILE NO/S: CA No 57 of 2010
DC No 66 of 2009

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Bundaberg

DELIVERED ON: 16 July 2010

DELIVERED AT: Brisbane

HEARING DATE: 16 June 2010

JUDGES: McMurdo P, Chesterman and White JJA
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Application for an extension of time to apply for leave to appeal refused with costs**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – applicant convicted of failing to properly secure load on trailer – applicant appeals against conviction – mistakenly filed notice of appeal in Bundaberg District Court – whether applicant has any prospects of success in appeal – whether it is in the interests of justice to grant an extension of time

District Court of Queensland Act 1967 (Qld), s 118(3)
District Court Practice Direction No 5 of 2001, cl 1(d)
Transport Operations (Road Use Management – Mass, Dimensions and Loading) Regulation 2005, s 41(1)(a)

Manning v Qld Transport [2010] QDC 15, cited

COUNSEL: The applicant appeared on his own behalf
P J Alsbury for the respondent

SOLICITORS: The applicant appeared on his own behalf
Department of Transport and Main Roads

- [1] **McMURDO P:** The applicant, John Frederick Manning, appealed to the District Court at Bundaberg under s 222 *Justices Act 1886 (Qld)* against his conviction in the Magistrates Court for failing to properly secure a load on a trailer contrary to s 41 (1)(a) *Transport Operations (Road Use Management – Mass, Dimensions and Loading) Regulation 2005*; his sentence (a \$150 fine and, at the request of the applicant, the default period of imprisonment of 4 days in case of non-payment); and the order that he pay costs of \$911.78. The District Court dismissed his appeals, other than ordering that his traffic record be corrected to reflect the offence of which he was in truth convicted, by deleting any reference to "heavy" vehicle. On 23 March 2010, he applied for an extension of time to apply for leave to appeal to this Court against the District Court orders under s 118(3) *District Court of Queensland Act 1967 (Qld)*.
- [2] In his application and written argument in support of it, he contends that he lodged his application at the Bundaberg court house within time, only to be told that it must be lodged in Brisbane. That assertion is not supported by evidence but it is undisputed by the respondent, the Department of Transport and Main Roads and I have obtained a copy of that application from the Bundaberg District Court registry.
- [3] The respondent concedes that the explanation for delay is plausible, but contends that the application to extend time should be refused as the applicant has no prospects of succeeding in any appeal.
- [4] The applicant has not filed a proposed notice of appeal in this Court but the document that he mistakenly filed in the Bundaberg District Court lists 11 grounds. These contain, in essence, five contentions. The first concerns his readiness to proceed with the appeal in the District Court. He claims he was deprived of the opportunity of making submissions by the appeal proceeding; that he was not present in court; and that the respondent had not lodged a certificate of readiness.
- [5] The second is that the judge had a conflict of interest and should have disqualified herself because she had had previous dealings with the applicant. The applicant expanded on this ground in his oral argument by explaining that he had criminal charges brought against him when the judge was the Director of Public Prosecutions. He told the Court that the judge did not personally prosecute him and he did not allege she was personally involved in the prosecution.
- [6] The third is that the respondent did not establish the costs of the prosecution.
- [7] The fourth is that the judge should have ordered "that [the applicant] be granted social security benefits immediately after his 4 day imprisonment and any costs be taken out at \$5 or \$10 a fortnight."
- [8] The fifth is that the judge failed to give the applicant a chance to bring a counterclaim against the respondent.
- [9] As to the applicant's first ground, the transcript shows that he was present in court at the hearing and played an active role in his appeal. He expressed his concern to the judge at the commencement of the hearing of the appeal that he had not had time to go through the respondent's material. The judge stated:
- "I'll give you opportunity to make submissions that you want today.
If you need – at the end – if at the end of that you think that you need

more time, I'll allow you to make written submissions in addition to what you've said today. Does that make sense?

APPELLANT: Yes

HER HONOUR: All right. Would you be comfortable with that?

APPELLANT: Yes."

Later, the appellant made oral submissions to the judge. At their conclusion, the judge asked: "Is there anything else you wanted to say to me?" The applicant responded, "No". The judge indicated she would reserve her decision and give her judgment the following week before she completed her Bundaberg circuit. The applicant did not ask for the opportunity to deliver any further submissions. He has not asserted, let alone demonstrated, that he was prejudiced by the appeal proceeding on the day it was heard. Although a certificate of readiness had not been lodged, the judge had power to dispense with it and inferentially did so: see *District Court Practice Direction No 5 of 2001*, cl 1(d). None of these contentions provide grounds for allowing an appeal to this Court.

- [10] The applicant's second ground, that there was some conflict of interest on the part of the judge, has not been made out. He has not presented any material to support it. The judge may have been the Director of Public Prosecutions at a time when the applicant was charged with a criminal offence or offences. But she had no personal involvement in the prosecution of those charges which were unrelated to the applicant's appeal before her. There was no reason for the judge to recuse herself.
- [11] The applicant's third ground concerns her Honour's treatment of his appeal against costs. Her Honour dealt with this matter at [34] of her reasons.¹ The applicant has not presented any material to show any error in the judge's reasoned determination of this issue such as might ground a successful appeal.
- [12] The applicant's fourth ground is as to the manner in which the fine and costs orders should have been imposed by the magistrate. As the judge noted, the fine imposed upon the applicant was modest.² As to how the applicant paid the fine and whether he converted it to a fine option order was something for the applicant to take up with the State Penalties Enforcement Registry under the *State Penalties Enforcement Act 1999* (Qld). It does not provide any ground for successfully appealing from the District Court judgment and orders.
- [13] The applicant's final ground is that the judge failed to give the applicant a chance to bring a counterclaim against Queensland Transport. The transcript of proceedings before the District Court judge does not record the applicant raising this issue. In any case, a desire on the part of the applicant to bring some sort of counterclaim against Queensland Transport was no reason for the judge not to proceed with the hearing and determination of this appeal. This contention is no ground for allowing an appeal to this Court.
- [14] In his oral submissions, the applicant raised another matter. He complained that he did not have legal representation; he had been refused Legal Aid. The respondent had "free" legal representation. This unfair imbalance between him and the respondent meant that his appeal should be allowed. The illogicality of that submission is manifest. The applicant's lack of legal representation is in itself no reason to allow an appeal. The apparent lack of merit in the applicant's many

¹ *Manning v Queensland Transport* [2010] QDC 15.

² Above, [43].

contentions does not suggest that scarce public resources should be expended in advancing them.

- [15] None of the applicant's proposed written grounds of appeal or his submissions suggest that he has any prospects of success in an appeal to this Court. His case concerns a \$150 fine for a breach of the *Transport Operations (Road Use Management – Mass, Dimensions and Loading) Regulation 2005* and an order to pay costs of \$911.78. He has already had an appeal to the District Court where his grievances were carefully considered by the District Court judge in a reasoned judgment. Her Honour reviewed the evidence before the magistrate and made her own determination on it,³ ultimately concluding that she was satisfied beyond reasonable doubt that the applicant's load "was not secured in a way to make it unlikely to fall from the trailer".⁴ She also appropriately considered the applicant's 10 grounds of appeal against conviction before her. Having dismissed them, the judge turned to consider the applicant's appeal against his modest sentence and unexceptional costs order. Although his application for leave to appeal to this Court was filed only a few weeks late and his explanation for the delay is plausible, his application to extend time to apply for leave to appeal should not be granted if the interests of justice do not warrant it. He has not demonstrated that he has any prospects of success in an appeal. It is therefore futile to extend time. It follows that his application for an extension of time to apply for leave to appeal should be refused with costs.
- [16] **CHESTERMAN JA:** I agree with the President and with the orders proposed by her Honour.
- [17] **WHITE JA:** I have read the reasons for judgment of the President and agree with her Honour that the application to extend time should be refused for those reasons.

³ Above, [17].

⁴ Above, [28].