

SUPREME COURT OF QUEENSLAND

CITATION: *R v Timbrell* [2010] QCA 226

PARTIES: **R**
v
TIMBRELL, Paul
(applicant)

FILE NOS: CA No 167 of 2010
SC No 296 of 2010

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 26 August 2010

DELIVERED AT: Brisbane

HEARING DATE: 26 August 2010

JUDGES: Muir and Chesterman JJA and Mullins J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **The application for extension of time within which to apply for leave to appeal be refused**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – applicant convicted on a guilty plea of grievous bodily harm whilst armed with a weapon – applicant sentenced to three years and six months imprisonment – applicant submits sentence manifestly excessive – applicant submits delay in filing application for leave to appeal due to lack of understanding of appeal process – whether explanation for delay satisfactory – whether in interests of justice to grant extension of time

Puschenjak v Wade [\[2002\] QCA 190](#), cited
R v Amituanai (1995) 78 A Crim R 588, [\[1995\] QCA 80](#), cited
R v Biersteker [1995] QCA 266, cited
R v Elliot [\[2000\] QCA 267](#), cited
R v O'Dell [\[2006\] QCA 8](#), cited
R v Tait [1999] 2 Qd R 667; [\[1998\] QCA 304](#), cited
R v Weare [\[2002\] QCA 183](#), cited
R v Wright [\[1998\] QCA 184](#), cited

COUNSEL: The applicant appeared on his own behalf
D R Kinsella for the respondent

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

MUIR JA: The applicant, who was 54 years of age at the time of the offence, was convicted on a plea of guilty on 28 May 2010 in the District Court of one count of assault occasioning grievous bodily harm whilst armed with a weapon and sentenced to a term of imprisonment of three years and six months. His parole eligibility date was fixed at 27 May 2011. He applies for leave to appeal against his sentence.

The complainant was a 26 year old female who was described by the primary Judge as having been in a relationship with the applicant's daughter. The applicant went to the complainant's residence to retrieve his daughter's bicycle. There was a verbal altercation. After the applicant was told to leave, he picked up a wooden framed lid and struck the complainant in the face with it causing a serious injury to an eye.

The injury, if left untreated, could have resulted in the complete loss of vision from the eye. The complainant required bed rest for two months and lost some vision in the affected eye. She suffered constant pain for an extended period, was off work for two months and became depressed and resentful. She has been advised that she will need to take eye drops for the rest of her life and has an increased risk of glaucoma. She experiences difficulty with her vision (in September 2009 her visual clarity was assessed at 6/7.5) and she has a cosmetic impairment. The pupil of her left eye is permanently fully dilated with an obvious red colouration.

The applicant had not been sentenced previously to a term of imprisonment but he had four convictions for offences of violence against women. There was also a conviction for violence against a child. He has been placed on good behaviour bonds and probation

orders. The applicant pleaded guilty at an earlier stage and the sentencing Judge accepted that he was remorseful for the injury he inflicted.

The primary Judge noted that the applicant had suffered a number of traumatic events in his life, including a traumatic injury, and that he suffered from a major depressive disorder. He recognised all of those mitigating factors, including the early plea, by setting a parole eligibility date after the applicant had served 12 months of his term of imprisonment.

The applicant mentioned in his submissions that, as a result of the traumatic injury to which the Judge referred, he has a prosthesis which makes the serving of his sentence more than usually difficult. That is a matter which, it may be inferred, the sentencing Judge took into account.

The offence arose from a brief loss of self-control by the applicant but he must bear the consequences for the injury he inflicted. As Davies and Thomas JJ observed in *R v Elliott* [2000] QCA 267 at [10], "The actual harm caused is an important factor in the sentencing process ...". In *R v Amituanai* (1995) 78 A Crim R 588 at 589, Pincus J said, "... for reasons which are evident enough, the offender will find that his punishment may depend on the extent of the damage the victim happens to sustain. That is, the risk that a blow which might by good luck have caused little damage in fact has catastrophic results, as it had here, is one which is shared by the victim and the offender."

To my mind, the injury sustained by the complainant, affecting as it does her eyesight, is extremely serious. The sentence was within the range of the exercise of a sound sentencing discretion, particularly as the applicant has a number of prior convictions for violence against women.

The sentence is supported by *R v Wright* [1998] QCA 184, *R v Weare* [2002] QCA 183 and *R v Biersteker* [1995] QCA 266. Reference was made to *R v O'Dell* [2006] QCA 8 in

which a sentence of two years' imprisonment suspended after 12 months was described as distinctly moderate.

The applicant requires an extension of time within which to apply for leave to appeal. His application was filed and served on 12 July 2010, 14 days late. He has explained his delay. Counsel for the respondent submits that the explanation for the delay is not entirely satisfactory. However, the delay was relatively brief and if the appeal had prospects of success it would be in the interests of justice to grant an extension of time. See *R v Tait* [1999] 2 Qd R 667 and *Puschenjak v Wade* [2002] QCA 190. But as there are no reasonable prospects of success, the application for extension of time within which to apply for leave to appeal against sentence should be refused.

CHESTERMAN JA: I agree.

MULLINS J: I agree.

MUIR JA: The order of the Court is that the application for extension of time within which to apply for leave to appeal against sentence be refused.