

SUPREME COURT OF QUEENSLAND

CITATION: *R v Dobie* [2011] QCA 21

PARTIES: **R**
v
DOBIE, Keith William
(applicant)

FILE NO/S: CA No 245 of 2010
DC No 1221 of 2008

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence & Conviction)

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 18 February 2011

DELIVERED AT: Brisbane

HEARING DATE: 1 February 2011

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

ORDER: **1. The application for an extension of time to appeal against conviction and sentence is refused.**
2. The applicant is not permitted to file any further applications for an extension of time to appeal against conviction or sentence in this matter without leave of a judge of appeal.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where applicant was convicted of trafficking in persons, dealing in the proceeds of crime in an amount exceeding \$10,000 and presenting false documents to an immigration official – where the applicant sought an extension of time to appeal against his conviction and sentence – where the applicant argued there was a conflict with the sentencing judge due to her role as the Director of Public Prosecutions (Qld) at the time the applicant was charged – where no evidence was presented to support this ground – where the applicant raised two further grounds of appeal that had already been considered and rejected in previous appeals to this Court – whether the applicant has any prospects of success on appeal – whether it is in the interests of justice to grant an extension of time

Criminal Code 1995 (Cth), s 11.2(1), s 271.2(2B), s 400.6(1)
Migration Act 1958 (Cth), s 234(1)(a)

R v Dobie (2009) 236 FLR 455; [\[2009\] QCA 394](#), considered

R v Dobie [\[2010\] QCA 34](#), considered

R v MAM [\[2005\] QCA 323](#), cited

R v Nudd [\[2007\] QCA 40](#), cited

R v Pettigrew [1997] 1 Qd R 601; [\[1996\] QCA 235](#), cited

COUNSEL: The applicant appeared on his own behalf
 G R Rice SC for the respondent

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

- [1] **MARGARET McMURDO P:** The applicant, Keith William Dobie, was charged on an indictment in the District Court presented on 7 November 2007 with trafficking in persons between 13 November 2005 and 23 January 2006 (s 271.2(2B) *Criminal Code* 1995 (Cth)) (count 1); trafficking in persons between 11 February 2006 and 17 April 2006 (count 2); dealing in the proceeds of crime between 18 December 2005 and 17 April 2006 (s 400.6(1) *Criminal Code* 1995 (Cth)) (count 3); presenting a false document to an immigration official on 9 December 2005 at Bangkok (s 234(1)(a) *Migration Act* 1958 (Cth); s 11.2(1) *Criminal Code* 1995 (Cth)) (count 4); presenting a false document to an immigration official on 22 February 2006 at Bangkok (count 5); presenting a false document to an immigration official on 15 May 2006 at Bangkok (count 6); and presenting a false document to an immigration official on 15 May 2006 at Bangkok (count 7). The indictment noted that the prosecution of these charges was "instituted by Shane Richard Hunter for and on behalf of the Commonwealth Director of Public Prosecutions".
- [2] On 10 October 2008, before her Honour Judge Clare SC in the Southport District Court, the applicant pleaded guilty to counts 3 to 7 inclusive. His sentence on those counts was adjourned until the end of his trial on counts 1 and 2.
- [3] On 20 October 2008, he pleaded not guilty to counts 1 and 2 and his trial on those counts commenced before Judge Clare. Later that afternoon, he was re-arraigned on counts 1 and 2, pleaded guilty and the jury was discharged. The following day, his sentencing on all counts was adjourned for hearing at Brisbane on 20 November 2008. On 20 November 2008, his sentencing was adjourned again to 9 December 2008. On 9 December 2008, the matter was adjourned until 18 December 2008, this time to allow the applicant to file an application, together with supporting affidavit material, to change his guilty pleas. On 18 December 2008, Judge Clare dismissed this application, apparently with the applicant's agreement, as the applicant was re-arraigned on all counts and pleaded guilty to them. His sentence was adjourned once more until 23 December 2008 when Judge Clare sentenced him to four years imprisonment on counts 1 and 2 and one year concurrent imprisonment on each of counts 3 to 5. On counts 6 and 7, he was sentenced to 12 months imprisonment, cumulative upon the sentence of four years imprisonment imposed on counts 1 and 2. The judge fixed a non-parole period of 22 months and declared 64 days spent in pre-sentence custody as time served under the sentence.

- [4] The applicant subsequently applied to this Court for leave to appeal against his sentence on all counts and for an extension of time within which to appeal against his conviction on counts 1 and 2. On 18 December 2009, this Court refused his application for leave to appeal against sentence, granted his application for an extension of time to appeal against his convictions on counts 1 and 2, but dismissed his appeal against conviction: see *R v Dobie*.¹ This Court considered the applicant's application for leave to appeal against sentence on its merits and concluded that the primary judge did not err in any of the ways contended for by the applicant, and that the sentence imposed was appropriate given the "pernicious and callous nature of the applicant's offending, carried out in a persistent way over a period of time and where the applicant had a relevant criminal history".² This Court also determined the applicant's appeal against his convictions on counts 1 and 2 was without merit.
- [5] Sometime later, the applicant again applied to this Court for an extension of time within which to appeal against his convictions, this time on all counts. On 26 February 2010, this Court also refused that application: see *R v Dobie*.³ This Court noted that, in its earlier decision,⁴ the Court heard and determined the applicant's appeal against conviction on counts 1 and 2 on the merits so that his right of appeal against those convictions had been exhausted: *R v Pettigrew*;⁵ *R v MAM*;⁶ *R v Nudd*;⁷ *R v Dobie*.⁸ This Court also determined that the applicant had not demonstrated any basis to withdraw his plea of guilty to any of the seven counts.⁹
- [6] Despite this Court's previous dismissal of his appeal against convictions on counts 1 and 2; the refusal of his application for leave to appeal against sentence in respect of these matters; and the subsequent refusal to extend time to appeal against conviction on all seven counts, on 20 October 2010 the applicant filed the present application for an extension of time to appeal against his conviction and sentence on all counts. He states the grounds of his application as:
- "I have been out of prison for 60 days and it has taken me 60 days to get the new evidence to appeal for a new trial. This application will be based on false conflict of interest concerning the C.D.D.P and conflict of interest concerning the judge."
- [7] Elsewhere in his material he states:
- "(1) The application is on the grounds of conflict of interest concerning her Honour Judge L. Clare SC
(2) Conflict of interest concerning the C.D.P.P. The person involved is Mr Shane Hunter."
- [8] In his written and oral submissions, he contended that his application should be granted because there was a "conflict" in his case. This arose, he claimed, because Judge Clare had previously been the Director of Public Prosecutions (Queensland) and she was legally responsible for the decision to have charges brought against him.

¹ [2009] QCA 394, [7].

² *R v Dobie* [2009] QCA 394, [48].

³ [2010] QCA 34.

⁴ *R v Dobie* [2009] QCA 394.

⁵ [1997] 1 Qd R 601, 606.

⁶ [2005] QCA 323.

⁷ [2007] QCA 40.

⁸ [2010] QCA 34, [10].

⁹ *R v Dobie* [2010] QCA 34, [22].

- [9] The applicant's claim that the sentencing judge was involved in his prosecution on these counts is most serious. It is not disputed that at the time the offences occurred and the indictment was first presented, Judge Clare was the Director of Public Prosecutions (Queensland). Had Mrs Clare SC personally been responsible for the applicant's prosecution on these charges, it would have been fundamentally irregular for her as a judge to have sentenced him for them.
- [10] But the applicant's startling allegations appear entirely baseless. I arranged for copies of the indictment presented against him to be provided to the Court. The terms of the indictment and the endorsements on it make clear that the charges against him were brought under Commonwealth legislation by the Commonwealth Director of Public Prosecutions. Mr Shane Hunter, to whom the applicant refers in his material, instituted the prosecution of the applicant in the District Court on these offences for and on behalf of the Commonwealth Director of Public Prosecutions. Nothing, either in the terms of the indictment or the endorsements entered on it, suggests that Mrs Clare SC, whether as Director of Public Prosecutions (Queensland) or in any other capacity, was in any way involved in the prosecution of the applicant on these offences.
- [11] In his oral submissions, the applicant countered those self-evident facts with a contention that he had been charged in the Magistrates Court with offences against Queensland laws relating to the procuring of the women named in counts 1 and 2 for prostitution. Mrs Clare SC, as the Director of Public Prosecutions (Queensland), he claimed, was involved in the investigation and prosecution of offences at least closely connected with the present charges. He emphasised that Queensland and Federal police cooperated in the investigation of the offences the subject of this application.
- [12] The applicant produced no evidence to support these contentions. I note that he has a lengthy criminal history, including for fraud, false pretences and stealing.¹⁰ It seems inherently improbable that the Director of Public Prosecutions (Queensland) would be involved in the investigation and prosecution of relatively minor prostitution offences in the Magistrates Court.
- [13] Mr Rice SC, who appeared for the respondent, informed the Court that he had no knowledge of Mrs Clare SC, as the Director of Public Prosecutions (Queensland) or in any other capacity, having any involvement in the investigation or prosecution of the applicant on the present counts, or on related matters in the Magistrates Court. In his experience, this would not ordinarily occur.
- [14] It follows that the applicant has not demonstrated that Judge Clare was involved, personally or otherwise, in the prosecution of the seven counts to which he pleaded guilty in the District Court. These contentions are baseless and scurrilous.
- [15] The applicant's next contention is that:
"The CDPP offered the applicant a sentence of 12 months with whatever discount Her Honour wishes to give the applicant if I pleaded guilty to all counts. (This Fact I Have in Writing from the Director of the CDPP Mr Shane Hunter.)
The CDPP never offered the above to Her Honour the sentence put to her was a 4 year top with a 22 to 24 month bottom.

¹⁰ *R v Dobie* [2009] QCA 394, [38].

This is almost 3 times higher than the offer.

The applicant knows that the sentencing Judge does not have to take the CDPP offer. The offer should have been put to the Judge. The applicant would never have pleaded to all counts if the CDPP was going to not honour the offer." (errors as in original)

- [16] That very argument was considered on its merits and rightly rejected by this Court in February 2010: see *R v Dobie*.¹¹
- [17] The applicant next sought to re-argue his contention that there was an irregularity in the wording of counts 1 and 2 and for this reason his appeal against conviction on those counts should be allowed. That contention, too, was considered and rightly rejected by this Court in December 2009: *R v Dobie*.¹²
- [18] If the applicant is dissatisfied with this Court's determinations, remedy can lie only in an application for special leave to appeal to the High Court of Australia.
- [19] For these reasons, to grant the application to extend time to appeal would be futile, as the appeal which the applicant seeks to bring to this Court would inevitably fail. It is not therefore necessary to further consider and determine whether, where the interests of justice require it, this Court has power to grant the application to extend time to appeal, despite this Court's previous determinations against the applicant. The application for an extension of time to appeal against conviction and sentence must be refused.
- [20] The applicant's persistence in making repeated hopeless applications to extend the time within which to appeal in this case warrants this Court ordering that he not be permitted to file any further applications of this kind in this matter without leave of a judge of appeal.

ORDERS:

1. The application for an extension of time to appeal against conviction and sentence is refused.
 2. The applicant is not permitted to file any further applications for an extension of time to appeal against conviction or sentence in this matter without leave of a judge of appeal.
- [21] **FRASER JA:** I agree with the reasons for judgment of the President and the orders proposed by her Honour.
- [22] **CHESTERMAN JA:** I agree with the orders proposed by the President and with her Honour's reasons.

¹¹ [2010] QCA 34, [18]-[23].

¹² [2009] QCA 394, [18]-[35].