

# SUPREME COURT OF QUEENSLAND

CITATION: *R v BBZ* [2011] QCA 62

PARTIES: **R**  
**v**  
**BBZ**  
(applicant)

FILE NO/S: CA No 325 of 2010  
DC No 202 of 2006

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 6 April 2011

DELIVERED AT: Brisbane

HEARING DATE: 6 April 2011

JUDGES: White JA, Margaret Wilson AJA and Peter Lyons J  
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. The application for an extension of time within which to appeal against sentence is granted; and**  
**2. The time to bring the appeal against sentence is extended to 24 December 2010.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – where applicant found guilty of one count of maintaining an unlawful sexual relationship with a child under 16 with circumstances of aggravation, four counts of indecent treatment of a child under 16 with circumstances of aggravation and four counts of sodomy of a person under 18 – where applicant sought extension of time in which to apply for leave to appeal against sentence – where applicant contends that there should have been a separate sentence for each count of which applicant was convicted – whether leave to appeal should be granted

COUNSEL: P J Callaghan SC, with A Boe, for the applicant  
M J Copley SC for the respondent

SOLICITORS: Boe Williams for the applicant  
Director of Public Prosecutions (Queensland) for the respondent

- [1] **WHITE JA:** I'll ask Justice Wilson to give her reasons.
- [2] **MARGARET WILSON AJA:** This is an application for an extension of time in which to apply for leave to appeal against sentence.
- [3] On 17 May 2007, the applicant was convicted of one count of maintaining an unlawful sexual relationship with a child under 16 with circumstances of aggravation, four counts of indecent treatment of a child under 16 with circumstances of aggravation and four counts of sodomy of a person under 18 with circumstances of aggravation. He was acquitted of three counts of indecent treatment of the same child. The child was his daughter.
- [4] In her sentencing remarks, the learned sentencing Judge said,
- "At the end of the day, the jury have convicted you of a number of offences relating to when the child was 14 or 15 years of age. They have found you not guilty of the offences which substantively related to when she was a much younger child but they have convicted you of the maintaining."
- She went on to impose a sentence on each count but concurrently of 10 years' imprisonment.
- [5] An appeal against conviction was dismissed by this Court on 19 October 2007. The applicant has deposed to not understanding that that appeal had been brought only in relation to the convictions. He has deposed to having instructed his legal representatives to appeal against sentence also.
- [6] Since the appeal was dismissed, he has persistently sought legal assistance to appeal against the sentence. He has done this through the concerted efforts of his partner, followed by those of his sister, who have retained a succession of lawyers and sought legal assistance from legally trained academics. However, the various lawyers have not advanced his application for leave to appeal against sentence.
- [7] He has also had to deal with a personal breakdown and with an application for criminal compensation and a common law damages claim brought by the complainant.
- [8] In October 2010, the applicant's present lawyers were retained and it must be said that this application was then made quite promptly, being filed on 24 December 2010.
- [9] A full transcript of the trial is not available yet. There are two principal grounds of the proposed appeal against sentence: that the term of 10 years on each count was manifestly excessive and that the reasons contained in the sentencing remarks were inadequate.
- [10] Counsel for the applicant submitted that there should have been a separate sentence for each count of which he was convicted and had there been, 10 years would not have been apposite for counts 5 to 12 on the indictment.

- [11] The maintaining charge on the indictment was a charge of conduct over a 10 year period but it is not clear whether the applicant was sentenced on that basis. It may be that the jury were satisfied of maintaining only over a lesser period and it may be that the sentencing Judge intended to sentence on that basis.
- [12] It is also a ground of complaint that there is no reference in the sentencing remarks to the prospects of the applicant's rehabilitation.
- [13] In my view, it is not appropriate to fully determine the application for leave to appeal on this application. It is sufficient to say that it cannot be said the applicant has no prospects of success on the appeal. I would extend the time to apply for leave to appeal to 24 December 2010.
- [14] **WHITE JA:** I agree.
- [15] **PETER LYONS J:** I also agree.
- [16] **WHITE JA:** The orders are then as pronounced by Justice Wilson that the application for an extension of time within which to apply for leave to appeal against sentence is granted and the time is extended to 24 December 2010.