

SUPREME COURT OF QUEENSLAND

CITATION: *R v Verrall* [2011] QCA 206

PARTIES: **R**
v
VERRALL, Steven Peter
(applicant)

FILE NO/S: CA No 169 of 2011
SC No 1500 of 2009

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction)

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 25 August 2011

DELIVERED AT: Brisbane

HEARING DATE: 25 August 2011

JUDGES: Fraser and White JJA and Philippides J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Delivered ex tempore on 25 August 2011:**
Application for an extension of time within which to appeal against conviction is granted

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – POWER TO BRING APPEAL – FROM INTERLOCUTORY OR ANTECEDENT JUDGMENT OR ORDER – where the applicant pleaded guilty to 16 offences – where the applicant brought an application in the trial division to set aside his pleas of guilty – where the application was refused by the primary judge – where the applicant filed an application for an extension of time within which to appeal against conviction – where the applicant contended that he had an appeal within time against the decision of the primary judge refusing the application to set aside the pleas of guilty – whether an extension of time within which to appeal against conviction should be granted

R v Lowrie [1998] 2 Qd R 579; [1997] QCA 434, considered
R v Nerbas [\[2011\] QCA 199](#), considered

COUNSEL: The applicant appeared on his own behalf
J N Hanna for the respondent

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

FRASER JA: This is an application for an extension of time within which to appeal against a conviction entered on the applicant's plea of guilty. However, the applicant contends that he has an appeal lodged within time against a subsequent decision which refused him leave to withdraw his pleas of guilty. Before I go further, it's as well I mention the chronology.

On the 11th of November 2009 the applicant pleaded guilty before Justice Mullins to 16 offences. On 30th May 2011 Justice Byrne refused the applicant's application to set aside his pleas of guilty. On the 21st of June this year the applicant applied for an extension of time within which to appeal against conviction. He has, however, as I have said, contended that he has a right to appeal against the decision of Justice Byrne refusing his application to set aside his pleas of guilty. If so, he has an appeal from that decision within time.

The applicant cited the Court's decision in *R v Nerbas* [2011] QCA 199 for the proposition that he has a right to appeal from Justice Byrne's decision, and on the face of that decision his submission is correct. The decision does appear to be authority for the proposition that a person in the applicant's position has a right of appeal against the decision of a judge in the trial division refusing to set aside a plea of guilty on the convicted person's application.

On the other hand, counsel for the respondent referred the Court to the Court's decision in *R v Lowrie* [1998] 2 Qd R 579. The respondent submits that it is authority for the proposition that the only rights of appeal in the criminal jurisdiction are those given by the Criminal Code. On the face of it the Criminal Code confers rights of appeal in this respect only against conviction, and it does not confer a right of appeal against a decision by a judge refusing to set aside a plea of guilty.

The problems thrown up by the case are of some difficulty and technicality, and the applicant, who appears for himself, has disavowed having the ability to advance further submissions on the point. If he does have an appeal within time, he in any event is faced with the difficulty of establishing an error in the decision of Justice Byrne. The respondent's submissions are to the effect that the applicant could not establish such an error. However, the Court does not have a full record of the proceedings below, and the applicant is disadvantaged in pursuing his case by his absence of legal representation.

In these circumstances the appropriate course seems to me to be to grant the extension of time within which to appeal against conviction for the purpose of enabling the Court to hear full argument, both in relation to the merits of that application and in relation to the question raised by the applicant as to whether he has a right of appeal from Justice Byrne's decision.

I would therefore propose that the Court grant the extension of time within which to appeal against conviction, which the applicant seeks.

WHITE JA: I agree with the order proposed by Justice Fraser for the reasons that he has expressed.

PHILIPPIDES J: I also agree.

FRASER JA: That will be the order of the Court.