SUPREME COURT OF QUEENSLAND

CITATION:	*R v JR* [2011] QCA 310
PARTIES:	**R** **v** **JR** (applicant)
FILE NO/S:	CA No 245 of 2011 DC No 177 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Conviction)
ORIGINATING COURT:	District Court at Ipswich
DELIVERED ON:	4 November 2011
DELIVERED AT:	Brisbane
HEARING DATE:	27 October 2011
JUDGES:	Chief Justice, Fraser JA and Margaret Wilson AJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for an extension of time refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where the applicant pleaded guilty and was convicted of indecent treatment of a child under 16 who was under his care, one count of maintaining an unlawful sexual relationship with a child under 16, and one count of incest – where the applicant filed an application for an extension of time in which to appeal against the convictions for maintaining and indecent treatment over four months later – where the applicant did not provide any explanation for his delay – whether the extension of time should be granted *Meissner v The Queen* (1995) 184 CLR 132; [1995] HCA 41, applied
COUNSEL:	The applicant appeared on his own behalf R G Martin SC for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

[1] **CHIEF JUSTICE**: I have had the advantage of reading the reasons for judgment of Margaret Wilson AJA. I agree that the application should be refused, for those reasons.

[2] **FRASER JA:** I agree with the reasons for judgment of Margaret Wilson AJA and the order proposed by her Honour.

[3] **MARGARET WILSON AJA**: The applicant seeks an extension of time in which to appeal against conviction of three sexual offences committed against his step-daughter.

[4] On 28 April 2011 he was represented by counsel when he pleaded guilty to one count of indecent treatment of a child under 16 who was under his care, one count of maintaining an unlawful sexual relationship with a child under 16, and one count of incest. The allocutus was thereupon administered. He was sentenced approximately two months later on 24 June 2011.

[5] On 2 September 2011 he filed an application for an extension of time in which to appeal against the convictions for maintaining and indecent treatment. He has not provided any explanation for his delay.

[6] He has also lodged (within time) an application for leave to appeal against sentence. That application will be heard in due course.

[7] The applicant is now self-represented. He says that he always maintained his innocence of the indecent dealing charge and the maintaining charge, but acknowledged that he was guilty of the incest. He says that the sexual relationship did not commence until after the complainant turned 16.

[8] The Court will not go behind pleas of guilty unless satisfied that there has been a miscarriage of justice. In *Meissner v The Queen*[1] Brennan, Toohey and McHugh JJ said:

> "A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty. An inducement to plead guilty does not necessarily have a tendency to pervert the course of justice, for the inducement may be offered simply to assist the person charged to make a free choice in that person's own interests. A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence. The principle is stated by Lawton LJ in *R v Inns*:
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> > 'The whole basis of a plea on arraignment is that in open court an accused freely says what he is going to do; and the law attaches so much importance to a plea of guilty in open court that no further proof is required of the accused's guilt. When the accused is making a plea of guilty under pressure and threats, he does not make a free plea and the trial starts without there being a proper plea at all. All that follows thereafter is, in our judgment, a nullity.'
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> It may not be strictly accurate to describe what follows as a nullity, but it is certainly liable to be set aside and a new trial ordered. If

[1] (1995) 184 CLR 132 at 141, 142.

> a plea of guilty is entered by the person charged in purported exercise of a free choice to serve that person's own interests, but the plea is in fact procured by pressure and threats, there is a miscarriage of justice. In such a case, the court is falsely led to dispense with a trial on the faith of a defective plea. The course of justice is thus perverted.'" (citations omitted.)

[9] In the same case Dawson J said:[2]

> "It is true that a person may plead guilty upon grounds which extend beyond that person's belief in his guilt. He may do so for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of a plea of guilty upon grounds such as these nevertheless constitutes an admission of all the elements of the offence and a conviction entered upon the basis of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. Ordinarily that will only be where the accused did not understand the nature of the charge or did not intend to admit he was guilty of it or if upon the facts admitted by the plea he could not in law have been guilty of the offence. But the accused may show that a miscarriage of justice occurred in other ways and so be allowed to withdraw his plea of guilty and have his conviction set aside. For example, he may show that his plea was induced by intimidation of one kind or another, or by an improper inducement or by fraud." (citations omitted)

[10] The applicant has not provided any sworn evidence in support of his application for an extension of time. In handwritten submissions he asserted that, on the morning he pleaded guilty to the indecent treatment and maintaining charges, his barrister advised him against going to trial on those charges on the basis that the jury would have been biased by his guilty plea to the incest charge, and that the barrister wrongly advised him that evidence he wished to adduce to establish his innocence of those first two charges would be ruled inadmissible because it invaded the complainant's privacy. In oral submissions before this Court he said that on the morning he pleaded guilty he "couldn't think straight"; that he was not of sound mind.

[11] As senior counsel for the respondent observed, the applicant did not place before this court any psychiatric evidence supporting the assertion of unsoundness of mind, or any material supporting his assertion of having evidence consistent with his innocence.

[12] Significantly, at the sentence proceedings two months after he pleaded guilty, when he was again represented by counsel, he did not attempt to withdraw his pleas of guilty. An agreed statement of facts was tendered before the sentencing judge. It did not contain any evidence consistent with the applicant's innocence of the indecent treatment and maintaining charges.

[13] According to the agreed statement of facts -

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2 (1995) 184 CLR 132 at 157.

(a) The complainant was born in February 1989;

(b) The indecent treatment occurred when she was aged 12. The applicant entered her bedroom in the early hours one morning, and with her consent, lay in her bed with her. While doing so he fondled her breasts and moved his hand down her body, causing her to sit up so that he would stop;

(c) The maintaining extended over a period of more than 20 months when she was aged 14 to 16 years. While her mother was out, the applicant would get into bed with her. His offending conduct began with touching her breasts and the outside of her vagina under clothing and kissing her. It escalated to having her masturbate him on a regular basis, sometimes until he ejaculated, and his performing oral sex on her and digitally penetrating her vagina. About six months after the offending began, he inserted his penis into her vagina, and thereafter vaginal intercourse two to three times per week;

(d) The incest charge related to sexual intercourse between the complainant and the applicant from the time she left school until she formed a relationship with someone else. She was aged 16 – 18 years.

[14] In all of the circumstances, the applicant does not have any prospects of establishing a miscarriage of justice.

[15] The application for an extension of time should be refused.