

SUPREME COURT OF QUEENSLAND

CITATION: *R v McKinlay* [2012] QCA 86

PARTIES: **R**
v
McKINLAY, Peter Darrell
(applicant)

FILE NO/S: CA No 33 of 2012
MC No 15866 of 2009

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction & Sentence)

ORIGINATING COURT: Magistrates Court at Southport

DELIVERED EX TEMPORE ON: 12 April 2012

DELIVERED AT: Brisbane

HEARING DATE: 12 April 2012

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

ORDERS: **The application for an extension of time be refused**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where applicant convicted on guilty plea in Magistrates Court of serious assault – where applicant had applied for an extension of time in which to appeal to Court of Appeal – where application was refused on the basis the court had no jurisdiction – where applicant sought an extension of time to file a second appeal against conviction and sentence – whether the court had jurisdiction to hear an appeal from the Magistrates Court

McKinlay v Commissioner of Police [\[2011\] QCA 356](#), followed

COUNSEL: The applicant appeared on his own behalf
D L Meredith for the respondent

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

MULLINS J: The applicant, Mr McKinlay, applies to the Court of Appeal for an extension of time in which to appeal his conviction and sentence before the Magistrates Court at Southport on 7 February 2011 for serious assault.

This is the second time that Mr McKinlay has made an application to this Court for an extension of time in which to appeal against conviction. The last application was dismissed by the Court of Appeal on 9 December 2011: *McKinlay v Commissioner of Police* [2011] QCA 356.

Those reasons set out the history of the offending, the charging of Mr McKinlay with the offence, the proceeding in the Magistrates Court where the offence was dealt with summarily on Mr McKinlay's plea of guilty, and Mr McKinlay's two unsuccessful applications to the District Court for extension of time in which to appeal.

One of Mr McKinlay's complaints at the last hearing before the Court of Appeal was that he had never received from the police the witness statements and the tape of his record of interview before he was dealt with for the offence in the Magistrates Court. Prior to the current application Mr McKinlay received from the police a tape of his record of interview. His grounds of appeal are now based on the content of the record of interview and the failure of the police to provide him with the record of interview before he pleaded guilty.

The receipt by Mr McKinlay of his tape-recorded interview does not alter the position that was set out in *McKinlay v Commissioner of Police* [2011] QCA 356 at [16]. This Court does not have jurisdiction to entertain an appeal from Mr McKinlay's conviction or sentence in the Magistrates Court. There is no point in granting an extension of time for Mr McKinlay to appeal. The application for extension of time should be refused.

MUIR JA: I agree.

WHITE JA: I agree also.

MUIR JA: The order of the Court is that the application for an extension of time be refused.