[2012] QCA 221

COURT OF APPEAL

MARGARET McMURDO P
WHITE JA
FRYBERG J

CA No 132 of 2012
SC No 402 of 2003

THE QUEEN

v

McGRANE, Michael **Applicant**

BRISBANE

DATE 22/08/2012

JUDGMENT

THE PRESIDENT: The applicant, Michael McGrane, was convicted in the Supreme Court at Brisbane on 19 December 2001 of murdering Yuen Ling Chan at Brisbane on a date between 24 January 1997 and 1 February 1997. He unsuccessfully appealed to this Court against that conviction: see *R v McGrane* [2002] QCA 173. He filed an application for special leave to appeal to the High Court of Australia on 13 June 2002, but abandoned it on 21 November 2002. On 12 February 2007 he applied to this Court for an extension of time for leave to appeal against conviction and to adduce further evidence. He abandoned those applications on 11 April 2007. See *R v McGrane* [2008] QCA 42, p 2. On 26 October 2007 he filed further applications for an extension of time to appeal against conviction and to adduce further evidence in this Court. Those applications were heard and refused on 5 March 2008: see *R v McGrane* [2008] QCA 42. Material he has placed before this Court shows that he has petitioned Her Excellency, the Governor of Queensland, for a pardon but that, too, was refused on 1 February 2010.

Undeterred, the applicant has brought yet another application for an extension of time both to appeal against conviction and for leave to appeal against sentence, and also an application for leave to adduce evidence to this Court. The grounds of his application are that he "requests that the Court review the decision or vary or set aside the judgment or order of the Court in the Queen v Michael McGrane CA 1/02 on the basis of the slip rule as outlined in R v Pettigrew". He claims the original appeal was not determined on its merits. He argues that medical evidence as to the age of the foetus in the deceased's uterus was incorrect and then puts forward an hypothesis which he suggests gave a motive to the deceased's husband to have her murdered or for her to suicide by overdose of heroin or morphine. His submissions include a detailed critique of aspects of the medical and other evidence at trial and a claim that the prosecution did not disclose relevant information prior to his trial.

As to the application to extend time to apply for leave to appeal against sentence, whilst his conviction for murder stands, there is only one possible sentence for that offence, namely, mandatory life imprisonment: see s 305 *Criminal Code* 1899 (Qld). Unless his murder conviction is set aside, the application for leave to appeal against sentence cannot succeed.

As this Court has already determined the applicant's appeal against conviction on the merits, the right of appeal conferred by s 668D *Criminal Code* has been exercised. The Court has no jurisdiction to hear a further appeal. See *R v Nudd* [2007] QCA 40; *R v Lumley* [2009] QCA 172 and *Grierson v The Queen* (1938) 60 CLR 431.

The applicant's present applications turn "on the slip rule as outlined in *R v Pettigrew*" [1997] 1 Qd R 601. In *Pettigrew* the Court of Appeal initially refused an application for leave to appeal against sentence after having erroneously been informed that the effective total sentence being served by Pettigrew was six and a half years whereas it was in fact eight years. The Court mistakenly acted on the basis that the sentence was six and a half year imprisonment in first refusing leave to appeal. In those circumstances, the Court later determined that, under s 8(1) *Supreme Court of Queensland Act* 1991 (Qld), it had jurisdiction

to reconsider an interlocutory order refusing leave to appeal even though the order had been perfected. As this Court noted in *R v McGrane* [2008] QCA 42, p 4, *Pettigrew* and s 8(1) are of no assistance to the applicant in this case. His most recent hypotheses put forward in his lengthy written and oral submissions and the further evidence he seeks to lead do nothing to cast doubt on, let alone undermine, the correctness of that conclusion.

It follows that this Court has no jurisdiction to hear another appeal against conviction under s 668D in this matter. This is so irrespective of the further evidence that he wishes to put before us. Any appeal from this Court's order dismissing the applicant's appeal to this Court in 2002 must be by way of special leave to the High Court of Australia. His sentence of life imprisonment cannot be mitigated so that any appeal against sentence could not succeed.

It follows that it would be futile to grant the applicant an extension of time in which to appeal against his conviction or for leave to appeal against his sentence. His application to adduce further evidence should also be refused.

I would refuse both applications and order that the applicant is not to file any further applications in the Court of Appeal registry without the leave of a Supreme Court Judge.

WHITE JA: I agree.

FRYBERG J: I agree.

THE PRESIDENT: The orders are as I have proposed.