

SUPREME COURT OF QUEENSLAND

CITATION: *R v Callope* [2012] QCA 201

PARTIES: **R**
v
CALLOPE, Clinton John
(applicant)

FILE NO/S: CA No 118 of 2012
DC No 123 of 2012

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Mount Isa

DELIVERED EX TEMPORE ON: 6 August 2012

DELIVERED AT: Brisbane

HEARING DATE: 6 August 2012

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

ORDER: **Application dismissed.**

CATCHWORDS: APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – where applicant convicted of one count of doing a malicious act with intent to cause grievous bodily harm (count 1) and two counts of assault occasioning bodily harm – where applicant sentenced to five and a half years imprisonment with a serious violent offence declaration for count 1 – where applicant sentenced to other concurrent terms of imprisonment for the latter counts – where applicant applied 18 months out of time for an extension of time within which to appeal against his sentences – where applicant only concerned with having the serious violent offence declaration set aside – where complainant was left with substantial physical and psychological injuries – where primary judge described attack as one of the most serious examples of a physical assault without a weapon – whether extension should be granted

COUNSEL: The applicant appeared on his own behalf
B J Merrin for the respondent

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

- [1] **MUIR JA:** The applicant was convicted on 24 September 2010 of one count of doing a malicious act with intent to cause grievous bodily harm and sentenced to five years and six months' imprisonment with a declaration that the offence was a serious violent offence. That was count 1.
- [2] He was convicted also of counts 2 and 3, assaults occasioning bodily harm, and sentenced to three years and six months' imprisonment for the former and two years' imprisonment for the latter. The sentences were ordered to be served concurrently.
- [3] He applies some 18 months out of time for an extension of time within which to appeal against his sentences. The applicant explains his delay on his legal advisor's failure to advise him and on his somewhat inconsistent belief based on what he said he was told that they would appeal against the serious violent offence declaration. There was no affidavit deposing to any of these matters which, even if accepted, do not explain an 18 months' delay.
- [4] The applicant is concerned only to attempt to have set aside the serious violent offence declaration. He points to some disparities in the recollections of various witnesses which could have been explored by him had there been a contested hearing. There is, however, no explanation of how any of these differences, if explored, could have affected the legitimacy of the making of the declaration. The declaration was plainly justifiable on the facts before the Judge.
- [5] The assault on the complainant is described in detail in the sentencing remarks. I will not repeat what the sentencing Judge said. It is sufficient in that regard to note that the attack, which was brutal and persistent, left the complainant with substantial physical and psychological injuries.
- [6] She was hospitalised in the first instance for 13 days and underwent surgery. One of the complainant's arms was fractured and a plate needed to be inserted. She will need further surgery on the arm as a bone graft is necessary. Part of an ear was bitten off, leaving her disfigured. She suffered a fractured eye socket. It seems that an attempt was made to gouge out her eyes. The Judge described the attack as clearly one of the most serious examples of a physical assault without a weapon that can be envisioned. It does not appear that description was in any way extravagant.
- [7] For the above reasons the appeal, if it were to proceed, has no prospects of success. I would dismiss the application for an extension of time within which to appeal.
- [8] **FRASER JA:** In my opinion, the sentence, including the serious violent offence declaration, was plainly within the sentencing discretion of the District Court Judge. I agree with the presiding Judge's reasons and proposed order.
- [9] **PHILIPPIDES J:** I also agree.
- [10] **MUIR JA:** The order will be as I have intimated.