

COURT OF APPEAL

**MARGARET McMURDO P
HOLMES JA
DALTON J**

**CA No 322 of 2012
DC No 118 of 2010
DC No 107 of 2009**

THE QUEEN

v

HAMADE, Said Ahmad

Applicant

BRISBANE

DATE 11/02/2013

JUDGMENT

THE PRESIDENT: Justice Holmes will deliver her reasons first.

HOLMES JA: This is an application for an extension of time for leave to appeal against sentence. The applicant is convicted of one count of maintaining an unlawful sexual relationship, one count of indecent treatment, one count of rape, and one count of unlawful carnal knowledge. He was sentenced to nine years imprisonment in respect of the maintaining count, twelve months imprisonment in respect of the indecent treatment count and five years imprisonment in respect of the rape count and three years imprisonment in respect of the unlawful carnal knowledge count. He was sentenced to a further six months cumulative in respect of a breach of suspended sentence.

The applicant was convicted after a trial on the 23rd of April 2010 and was sentenced on the 25th of June 2010. His application for leave to appeal against sentence was filed on the 29th

of November 2012. The two year delay is really not satisfactorily explained by reference to what the applicant describes as his problems with medication and understanding what was afoot in the way of appeals. That is particularly so given that the applicant has previously been granted an extension of time within which to appeal against his conviction and had his appeal against conviction heard in mid-2011.

He has provided in support of this application some additional material by way of statements. However, they go not to the question of sentence but to the question of his guilt on the charges, particularly that of rape. In circumstances in which he has already had an appeal against conviction refused, see *R v Hamade* [2011] QCA 152, his rights in that regard are exhausted.

Essentially, his submission here was that there was no rape entailed in the relationship that he sustained with the complainant, that he should instead have been convicted of unlawful carnal knowledge and that the sentence was too harsh as a result. Turning as it does on a complaint of conviction, it is clearly not a tenable ground of appeal against sentence.

In my view, in any event, he has no prospect of showing that the sentences imposed were manifestly excessive in a context where the relationship involved the rape of a girl of 15 years. Because of that absence of any prospects of success on the proposed leave to appeal against sentence, I would refuse the application for an extension of time.

THE PRESIDENT: I agree.

DALTON J: I agree.

THE PRESIDENT: The application for an extension of time is refused.