

COURT OF APPEAL

**HOLMES JA
APPLEGARTH J
JACKSON J**

**Appeal No 20 of 2013
DC No 386 of 2011
DC No 202 of 2012**

THE QUEEN

v

ROBINSON, David Barry

Applicant

BRISBANE

THURSDAY, 30 MAY 2013

JUDGMENT

HOLMES JA: The court will deal with the application. I'll ask Justice Jackson to give his reasons first.

JACKSON J: The applicant applies for an extension of the time in which to appeal, and for leave to appeal against conviction and sentence. On 18 October 2011, he was convicted on one count of uttering a forged document with intent to defraud and on 24 May 2012 he was sentenced to a term of 18 months imprisonment suspended after 208 days which was the day of sentence, taking into account time served as pre-sentence custody.

At the same time the applicant was dealt with for breach of a suspended sentence he was serving at the time of committing the uttering offence. The suspended sentence was imposed on 16 March 2006 for conviction of an offence of fraud. The sentence was for a term of four

years imprisonment suspended after 307 days. For breach of the suspended sentence, the applicant was sentenced to imprisonment until the rising of the court on 24 May 2012.

The applications for extension of time and leave to appeal were both filed on 4 February 2013. From conviction, the delay in filing was approximately 14 months, given that s 671(1) of the *Criminal Code Act* requires an application be filed within one calendar month. From sentence, the delay was approximately seven months.

The applicant filed other materials at the time of filing the applications, comprising medical reports, and hospital discharge summaries in relation to events occurring between November 2008 and April 2012. Relevantly, the events which gave rise to the charge of uttering occurred on 27 May 2008.

The information included in those documents shows that the applicant was under significant psychological stress, and had other significant health complications during the period between the events which gave rise to the offence and the month before he was sentenced. On 21 March 2012, he may have attempted suicide and he was admitted to an acute adult mental health facility between 29 March 2012 and 2 April 2012.

However, there's nothing in the evidence to suggest that the applicant was suffering from a relevant impairment or disability on either 18 October 2011, when he entered a plea of guilty to the charge of uttering, or on 24 May 2012, when he was sentenced.

Nor is there anything to explain the applicant's delay in filing applications for leave to appeal and to extend the time for an application for leave to appeal between then and 4 February 2013.

The circumstances of the uttering offence, as the statement of facts in exhibit 7 before the sentencing judge set them out, were that the applicant made an application for finance to St George Finance for the purchase of a hummer motor vehicle. In support of the application, the applicant provided a copy of a signed REIQ form of contract of purchase in which his address was shown as 6/444 Marine Parade, Biggera Waters. In fact the contract related to

5 Lefroy Drive, Coombabah. The forgery was the obliteration of the true address details and insertion in handwriting of the Marine Parade address on the REIQ contract copy.

The applicant contends in the grounds of the application for extension of time that had the original contract been available he would not have had any case to answer and would not have entered a plea of guilty to the charge. What that means is quite unclear and no evidence in support of the ground has been filed or tendered.

As to the application for leave to appeal against sentence, the applicant was aged 56 at the time of the offence and 60 at the time of sentence. He had a prior criminal history including convictions for offences of dishonesty. As previously mentioned, the offence of uttering was committed within the operational period of a suspended sentence imposed on 16 March 2006, for an offence of fraud. The offence was also committed within an ordered period of good behaviour of three years under a recognisance imposed on 4 June 2007, again for an offence of dishonesty.

The learned sentencing judge's remarks do not disclose any error of principle in the applicant's disfavour. The applicant's circumstances, including his physical and mental health issues were taken into account. The sentence is not suggested to be manifestly excessive.

Summarising, there is no good reason shown for the extensive delay in application for leave to appeal in this case. In any event, there's no reason to think that an appeal against conviction or sentence would be attended with any real prospects of success. There's no reason shown why it would be in the interests of justice to grant the extension sought. There doesn't appear to be any miscarriage of justice which would result if leave to appeal were refused. The application for an extension of time within which to apply for leave to appeal and appeal against conviction and sentence, in my view, should be dismissed.

HOLMES JA: I agree.

APPLEGARTH J: I agree.

HOLMES JA: The application for an extension of time is dismissed.