SUPREME COURT OF QUEENSLAND

CITATION:	*R v Forrester* [2013] QCA 329
PARTIES:	**R** **v** **FORRESTER, Shannon Wayne** (applicant)
FILE NOS:	CA No 118 of 2013 SC No 356 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence & Conviction)
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	1 November 2013
DELIVERED AT:	Brisbane
HEARING DATE:	22 October 2013
JUDGES:	Margaret McMurdo P and Gotterson JA and McMeekin J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for extension of time to appeal against conviction and against sentence refused.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – where the applicant was convicted on 19 December 2011 on four counts of supplying dangerous drugs on four different dates, one count of producing dangerous drugs in excess of two grams and one count of possessing dangerous drugs in excess of two grams – where he was sentenced on the same day to concurrent sentences of five years imprisonment for each of the production and possession offences and two years imprisonment for each of the supply offences – where the applicant made an application for an extension of time to appeal against his conviction and sentence almost 16 months after the appeal period expired – where his application for an extension of time was not supplemented by any affidavit made by him swearing to the circumstances which had resulted in his failing to appeal within time – where the applicant attributed his failure to appeal and to apply for leave to appeal in a timely fashion to his not knowing that there was a time limit and to his being unable to contact his legal advisers during the Christmas/New Year break

immediately following his imprisonment – where the applicant failed to satisfy the Court that he has any arguable ground of appeal against conviction or sentence which has any reasonable prospect of success – whether an extension of time should be granted

Criminal Code 1899 (Qld), s 671B

R v DAQ [2008] QCA 75, cited

COUNSEL: The applicant appeared on his own behalf
S J Farnden for the respondent

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

[1] **MARGARET McMURDO P:** I agree with Gotterson JA's reasons for refusing this application for an extension of time to appeal against conviction and to apply for leave to appeal against sentence. The applicant has not put before this Court the further evidence he seeks to lead in his proposed appeals. In any case, even if he can produce this evidence, it does not appear to be such as would lead this Court to determine that, had it been before the jury, there was a significant or real possibility that the jury, acting reasonably, would acquit.

[2] I agree with the order proposed by Gotterson JA.

[3] **GOTTERSON JA:** After a trial over four days in the Supreme Court at Brisbane, Shannon Forrester ("the applicant") was convicted on 19 December 2011 on four counts of supplying dangerous drugs (GHB) on four different dates, one count of producing dangerous drugs (GHB and GBL) in excess of two grams and one count of possessing dangerous drugs (GHB and GBL) in excess of two grams. He was sentenced that day to concurrent sentences of five years imprisonment for each of the production and possession offences and two years imprisonment for each of the supply offences.

[4] On 27 May 2013, the applicant filed two documents in this Court. One was a Form 26 notice of appeal and application for leave to appeal against sentence; and the other, a Form 28 notice of application for an extension of time within which to appeal. An extension of time was necessary, the time for appealing having expired on 16 January 2012.

[5] The applicant had prepared both documents himself without the benefit of legal assistance. The first of them listed one ground of appeal against conviction only – that the verdict was unreasonable and could not be supported by the evidence; and one ground of appeal against sentence only – that it is manifestly excessive in all the circumstances. The other document foreshadowed the possibility of additional grounds of appeal against conviction which, it was said, had only come to the applicant's attention since the involvement of legal representatives who have been engaged to represent him with respect to other offences for which he has been charged. His trial for those alleged offences is to take place in the Supreme Court in March 2014. The "recent" discovery of these possible grounds of appeal was advanced in the document as a ground for an extension of time.

[6] Several days prior to the date for hearing of this matter, the applicant wrote to the registrar of this Court to indicate that he wished the hearing of both appeals to be adjourned on the footing that he required legal assistance, which he had not by then been able to secure, to revise his grounds of appeal against conviction. However, he stated that he wished to proceed with the application for an extension of time on the date for hearing. The applicant appeared by video link at the hearing at which time he confirmed that he wished to proceed with the application for extension of time. His application was not supplemented by any affidavit made by him swearing to the circumstances which had resulted in his failing to appeal within time.

[7] In addressing the court, the applicant attributed his failure to appeal and to apply for leave to appeal in a timely fashion to his not knowing that there was a time limit and to his being unable to contact his legal advisers during the Christmas – New Year break immediately following his imprisonment. His delay thereafter he attributed to his lack of knowledge about the time limit and to his discovery of potential grounds of appeal only when the prosecution brief of evidence for his previous trial was made available to his legal representatives who have been engaged for his impending trial.

[8] A benign view of these circumstances is that they do provide some, although hardly adequate, explanation for both a failure to act within time and the lengthy delay of 16 months thereafter. In such circumstances, an extension of time will be granted only if the applicant also demonstrates that he has an arguable ground (or grounds) of appeal.[1]

[9] At the hearing, the applicant did not advance any basis for an argument that the verdict was unreasonable. Rather, he alluded to two other possible grounds of appeal against conviction. One of them was that his legal representative at the trial had been negligent in failing to cross-examine with respect to a black laptop which contained incriminating evidence against him and which, the prosecution case alleged, was found by investigating police at his residence. He claims that that brief of evidence for that trial which has been made available to his current legal representatives contained evidence of surveillance officers of his being observed departing Australia with a black laptop prior to the date on which it was alleged that the device was found at the residence.

[10] It is difficult to infer from this slender information that the applicant's legal representatives were negligent in any way, let alone in a way that deprived him of a significant possibility of acquittal. The applicant was present at his trial; he knew that evidence concerning discovery of the laptop at his residence was being given. Were it the truth, he would also have known that he had taken his laptop with him overseas at that time. He could have so instructed his legal representatives. They could have then made relevant departure and arrival enquiries, obtained corroborating exculpatory evidence (if available) and to have thereby armed themselves to cross-examine on an informed basis. There is no evidence from the applicant that he gave such instructions. Moreover, he did not testify at his trial. As formulated, this ground of appeal has no reasonable prospects of success.

[11] The other ground to which the applicant alluded was the availability to him now of evidence from the manager of the premises where he and his former partner resided.

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1 *R v DAQ* [2008] QCA 75 per Keane JA at [10], Fraser JA and Mackenzie AJA concurring.

This evidence is to the effect that when the residence was vacated, two keys to the storage locker were deposited on the manager's counter. The locker contained the drugs which formed the basis of the production and possession counts. It was searched by police on 8 April 2010 and the residence was vacated some eight days later.

[12] The applicant's former partner had testified that there was only one key to the locker which the applicant kept in his possession. Evidence that there were two keys, the applicant surmises, would have had a significant impact on his trial. His former partner would have been cross-examined to that effect and the manager would have been called as a witness.

[13] Here, the applicant knew that his former partner was to give evidence, the tenor of which was to exclude her from any involvement in the offending conduct. The applicant has not sworn that at the time of the trial, he did not know that there were two keys to the locker and therefore lacked the knowledge to give instructions to that effect. Nor has he demonstrated that this evidence from the manager would not have been available for his trial had due enquiry then been made. In these circumstances, this evidence would not be received as fresh evidence on appeal under s 671B of the *Criminal Code*. This ground, too, does not have any reasonable prospects of success.

[14] It remains to note that the applicant also claimed at the hearing to have two statements from the same prosecution witness which were in conflict. However, he did not provide any details of the identity of the person concerned or the conflicting contents of the statements. As well, he did not advance any argument as to why he contends that his sentence was manifestly excessive in all the circumstances.

[15] In my view, the applicant has failed to satisfy this Court that he has any arguable ground of appeal against conviction or sentence which has any reasonable prospect of success. In these circumstances, his application for an extension of time must be refused.

Order

[16] I would propose the following order:

1. Application for extension of time to appeal against conviction and against sentence refused.

[17] **McMEEKIN J:** I agree with Gotterson JA.