

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Ali* [2014] QCA 46

PARTIES: **R**  
**v**  
**ALI, Daniel Farook**  
(applicant/appellant)

FILE NO/S: CA No 289 of 2013  
DC No 1331 of 2013

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction & Sentence

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 14 March 2014

DELIVERED AT: Brisbane

HEARING DATE: 10 March 2014

JUDGES: Holmes and Muir JJA and Douglas J  
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. The appeal against conviction is dismissed.**  
**2. The application for leave to appeal against sentence is refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION RECORDED ON GUILTY PLEA – GENERAL PRINCIPLES – where the appellant pleaded guilty to one count of having committed fraud to the value of \$30,000 or more – where the amount involved was \$32,184 – where the appellant made an application to withdraw plea of guilty – where the appellant denied that his plea of guilty was entered of his own free will – where there was no sworn evidence to support the application – whether the plea of guilty should be set aside

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to one count of having committed fraud to the value of \$30,000 or more – where the amount involved was \$32,184 – where the applicant was sentenced to a term of two and a half years imprisonment, suspended after six months with an operational period of two and a half years – where the

applicant had no relevant previous criminal history and entered an early plea of guilty – where general deterrence was an important factor – where the sentence imposed was consistent with that advanced by the applicant’s counsel in the court below – whether the applicant should not be regarded as bound by the conduct of his case in the court below – whether sentence imposed was manifestly excessive

*Criminal Code* 1899 (Qld), s 408C(1)(b), s 408C(2)(c), s 408C(d), s 568(3)

*Meissner v The Queen* (1995) 184 CLR 132; [1995] HCA 41, considered

*R v Blackhall-Cain; ex parte Attorney-General (Qld)* [2000] QCA 380, cited

*R v Jeffree* [2010] QCA 47, applied

*R v Robinson; ex parte Attorney-General (Qld)* [2004] QCA 169, cited

*R v Walsh* [2008] QCA 391, followed

COUNSEL: The applicant/ appellant appeared on his own behalf  
P J McCarthy for the respondent

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

- [1] **HOLMES JA:** I agree with the reasons of Douglas J and the orders he proposes.
- [2] **MUIR JA:** I agree with the orders proposed by Douglas J and with his reasons.
- [3] **DOUGLAS J:** Mr Ali entered a plea of guilty to a charge of fraud to the value of \$30,000 or more. He was sentenced on 18 October 2013 to imprisonment for two and a half years suspended after six months for an operational period of two and a half years.
- [4] He pleaded guilty on the basis of allegations that he misappropriated funds placed with him for investment in “commodities, currencies, gold, oil, global indices, government bonds and treasury (bonds)”. In total he received \$118,625 to invest on behalf of eight complainants. Of that sum \$30,984 was not invested by him on behalf of the complainants but used by him to pay his personal expenses. Additionally he authorised a debit of \$1,200 to one complainant’s credit card to be credited to a personal account held by him without the authority of the complainant. That was alleged in the agreed schedule of facts to be a transaction beyond the terms of the complainant’s agreed investment. That money was also lost with the result that the total amount of which the complainants were said to be defrauded as a result of Mr Ali’s dishonesty was \$32,184.
- [5] He has lodged an appeal on the ground that his plea of guilty was not entered of his own free will and applies for leave to appeal against the sentence also. His application for leave to appeal against his sentence does not allege any ground in particular so it is appropriate to treat it as a complaint that his sentence was manifestly excessive.

### **Withdrawal of the plea of guilty**

- [6] No sworn material was filed by Mr Ali, who appeared for himself, in respect of the application to withdraw his plea of guilty. The assertions in his outline of argument do not come to grips properly with the facts on which the plea was based, namely that he used invested money to pay his personal expenses. He simply says in his written submission that the allegation that he used the funds for personal expenses without authority from his clients was inaccurate and that he had their verbal authority. There is no sworn evidence from him or the complainants to that effect. He also argues that he incurred business expenses and that all his clients knew that there were risks involved with the investments he made on their behalf and that there were fees for “running the investment”.
- [7] He detailed certain charges he paid from his own account to run his business which included telephone, computer and internet expenses. He argues that those were fees he was entitled to withdraw. He does not, however, address in any detail the allegation that he used the funds in respect of which he was charged for personal expenses. He also says in his outline that he understands that moneys taken from his account as clients’ fees were not withdrawn properly but says that it was done in the most economical way to avoid further charges. He blames the failure of the investments he made upon the global financial crisis. He also asserts that he had full verbal authority from his clients to make the payments totalling \$32,184, the subject of the charge against him. He blames his decision to plead guilty on poor advice from his counsel, including advice that an early plea could assist in his avoiding time in gaol.
- [8] In respect of this aspect of this application, the respondent submits that there is no material demonstrating that the pleas entered by him were other than pleas entered in an open court by a person of full age and apparent sound mind and understanding, in the exercise of his own free choice acting in his own interests; see *Meissner v The Queen* (1995) 184 CLR 132, 141, 157. He has not shown that he did not understand the nature of the charge or did not intend to admit he was guilty of it or that he could not in law have been guilty of the offence. In fact he conceded orally during the appeal that he entered a plea of guilty to seek leniency from the Court.
- [9] It is also relevant that a letter signed by him was tendered to the sentencing Court on his behalf in which he apologised unconditionally for his actions and expressed his remorse. In the letter he says “I would like you to understand that my taking the \$34,000 was done out of despair and desolation not greed”. He entered his plea of guilty more than a month before he was sentenced and was represented by a senior, experienced barrister who did not dispute the factual outline placed before the court by the prosecution.
- [10] There is no basis on the evidence on which Mr Ali should be permitted to withdraw his plea of guilty. The appropriate conclusion is that it was entered in the exercise of a free choice in his own interests and that no miscarriage of justice has occurred.

### **Application for leave to appeal against sentence**

- [11] The sentence imposed by the learned sentencing judge was consistent with the authorities to which her Honour was referred; *R v Robinson; ex parte Attorney-General*

(*Qld*) [2004] QCA 169; *R v Blackhall-Cain; ex parte Attorney-General (Qld)* [2000] QCA 380 and *R v Jeffrey* [2010] QCA 47.

- [12] Mr Ali was 38 to 40 years of age at the time of the offending which extended over a period of approximately 20 months. He had no relevant previous criminal record. Her Honour's sentencing remarks demonstrate that she carefully balanced the issues relevant to the sentence she imposed. She accepted that he had entered an early plea of guilty and that there had been a long time between the investigation and when he was charged in May 2011 and that he had saved the community significant time and expense in the prosecution of the matter which involved a large number of documents. She also took into account that he had not reoffended during the period since his offending finished and his sentence, treating that as an indication that he was on the path to rehabilitation. She noted the shame and ostracism he had suffered within his community and that there were consequences for him and his family beyond the sentence because of that.
- [13] Her Honour referred to the importance of the principle of general deterrence in cases of this nature while acknowledging that there was less need for personal deterrence in his case. The importance of general deterrence is emphasised in the authorities discussed in *R v Jeffrey* at [11]-[18]. Her Honour also pointed out that there was a large amount of money involved in circumstances, where the offence occurred over a long period of time and where there was no prospect of the money being recovered. Her Honour also drew attention to the fact that Mr Ali had breached the trust of a number of people.
- [14] The sentence imposed was consistent with that advanced by counsel on Mr Ali's behalf. Her Honour in fact imposed a term of imprisonment at the bottom of the range the subject of submissions before her, including the minimum period of time in custody that she thought was appropriate. In those circumstances "where the sentence which is imposed accords with the position taken by the offender before the sentencing judge", the authorities indicate that effect could only be given to the submission that the sentence was excessive in special circumstances sufficient to warrant the conclusion that the applicant should not be regarded as bound by the conduct of his case in the court below; see *R v Walsh* [2008] QCA 391 at [23]. Nothing is shown here to warrant any departure from that approach.

### **Conclusion and orders**

- [15] Accordingly, there is no basis on which the sentence imposed should be varied, the application for leave to appeal should be refused and the appeal against conviction should be dismissed.