

SUPREME COURT OF QUEENSLAND

CITATION: *R v Hardie* [2014] QCA 82

PARTIES: **R**
v
HARDIE, Jason Benjamin
(applicant)

FILE NO/S: CA No 309 of 2013
DC No 236 of 2013
DC No 484 of 2013

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 17 April 2014

DELIVERED AT: Brisbane

HEARING DATE: 9 April 2014

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

ORDER: **Application for an extension of time refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where the applicant contends the parole eligibility date ought to have been earlier, and the failure to do so renders the sentences imposed manifestly excessive – where the applicant’s explanation for failing to seek leave within time is that he was unaware he could appeal the parole eligibility date – where the applicant does not provide evidence explaining when he first became aware he may be able to appeal – whether an extension of time to appeal sentence should be granted

R v Norman [\[2011\] QCA 267](#), cited

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

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

- [1] **FRASER JA:** I agree with the reasons for judgment of Boddice J and the order proposed by his Honour.
- [2] **MORRISON JA:** I have had the advantage of reading the reasons of Boddice J and agree with his Honour that the application for an extension of time should be refused.
- [3] **BODDICE J:** The Applicant seeks an extension of time within which to appeal sentences imposed in the District Court on 5 April 2013 following his pleas of guilty to one count of escaping from lawful custody, one count of burglary and stealing, one count of unlawful use of a motor vehicle, two counts of stealing, one count of serious assault and one count of driving whilst disqualified as a repeat offender.
- [4] The Applicant was sentenced to imprisonment for 12 months for the count of escaping unlawful custody, to be served cumulatively on existing sentences of imprisonment imposed on 27 April 2012. On the remaining charges, the Applicant was sentenced to an effective period of imprisonment of 10 months, to be served cumulatively on the sentence for escaping from unlawful custody, and his existing sentences.
- [5] The effect of those sentences was to impose an additional period of imprisonment of 22 months upon the existing sentences of imprisonment. The Applicant's fulltime discharge date in respect of all of those sentences was 19 September 2016. Allowing for the pleas of guilty, and other factors in the Applicant's favour, the sentencing judge set a parole eligibility date at 19 September 2015.
- [6] The Applicant does not contend the periods of imprisonment were manifestly excessive in themselves. He contends the parole eligibility date ought to have been set at an earlier date, and the failure to do so renders the sentences imposed manifestly excessive.
- [7] The Applicant's explanation for the failure to seek leave to appeal within time is that he was unaware he could appeal the parole eligibility date. There is no affidavit or other evidence explaining when he first became aware he may be able to appeal.

Background

- [8] The Applicant was born on 3 September 1986. He has a lengthy criminal history as well as a significant traffic history. His criminal history reveals the Applicant has repeatedly committed property related and other offences throughout his adult life. He has been sentenced to multiple periods of imprisonment. On the occasions he has been given the benefit of bail or community based orders, he has breached those orders. He is, as the Crown submits, properly to be described as a recidivist offender whose conduct has been undeterred by increasing terms of imprisonment.

Offence

- [9] The offences to which the Applicant pleaded guilty were committed in June and July 2012. The first in time, escaping from lawful custody, occurred on the evening of 19 June 2012. At that time, the Applicant was a prisoner in the low security farm area of the Capricornia Correctional Centre, Rockhampton. The Applicant escaped by scaling the prison fence. He had placed clothing over the barb wire fence to facilitate that escape.

- [10] On the following day, 20 June 2012, the Applicant stole a motor vehicle and jewellery valued at over \$6,000 from a residence in Rockhampton. The Applicant, who was disqualified from holding a driver's licence, then drove the vehicle to Brisbane. On two occasions, he refuelled but left without paying for that fuel.
- [11] The Applicant was located by police on 13 July 2012. He sought to avoid detection but was successfully tracked by a police dog. The Applicant continued to resist and was ultimately bitten by the police dog.

Sentencing remarks

- [12] The sentencing judge recognised that having regard to the nature of the offences, and the aggravating circumstances, it was necessary to impose cumulative sentences. However, the sentencing judge also recognised there was a need to ensure the sentences imposed had regard to the totality of the offending whilst recognising the Applicant's pleas of guilty, cooperation and other personal circumstances.
- [13] The sentencing judge concluded the best way to achieve the appropriate sentence was to impose a cumulative sentence for escaping lawful custody, and further cumulative sentences for the other offences committed following the escape.

Discussion

- [14] Whilst the sentence imposed for escaping lawful custody seems high when considered against the most recent authority,¹ the Applicant's conduct was particularly serious. It involved escaping from a correctional centre in circumstances where the Applicant had been given the benefit of a level of trust by being placed on a low security farm. There is a need, in such circumstances, for a significant period of imprisonment to be imposed by way of both personal and general deterrence.
- [15] In any event, the sentence imposed for that offence must be considered against the fact that the cumulative sentences imposed for the property and other offences were significantly moderated from the sentences that would normally have been imposed for such offences in respect of an offender with an appalling criminal history. That significant moderation resulted in an overall head sentence which properly reflected the totality of the offending behaviour.
- [16] The overall head sentence properly balanced the need for deterrence against the prospects of rehabilitation, giving due consideration to the circumstances of the Applicant's offences, and his criminal history. Further, the parole eligibility date set by the sentencing judge properly reflected the factors in the Applicant's favour, and what were said to be prospects of rehabilitation. It cannot be said that parole eligibility did result in a sentence that is manifestly excessive.

Conclusion

- [17] In order to obtain an extension of time within which to appeal, the Applicant must establish that the discretion to extend time is properly to be exercised in his favour. Two factors are relevant. First, there must be good reason for the delay. Second, it must be in the interests of justice to grant the extension.

¹ *R v Norman* [2011] QCA 267.

- [18] As to the first, the Applicant's explanation for the delay is scant. However, it is unnecessary to further consider that aspect as the conclusion that the sentences imposed were not manifestly excessive means it would not be in the interests of justice to grant the extension even, if there had been good reason for the delay.
- [19] I would refuse the application for an extension of time.