

COURT OF APPEAL

**MARGARET McMURDO P
MORRISON JA
JACKSON J**

**CA No 221 of 2013
SC No 5 of 2014**

THE QUEEN

v

PEARSON, Brian Frederick

Applicant

BRISBANE

WEDNESDAY, 3 FEBRUARY 2016

JUDGMENT

THE PRESIDENT: The applicant, Brian Frederick Pearson, is self-represented in his application for an extension of time in which to appeal against his conviction on 27 November 2014 for the murder of his wife. He also seeks an extension of time to appeal against his sentence of life imprisonment.

An insurmountable difficulty in the application for an extension of time to appeal against conviction is that the applicant has already had his appeal against conviction in this Court heard and determined on its merits. It was dismissed: see *R v Pearson* [2015] QCA 157. In those circumstances, his right of appeal against conviction to this Court under s 668D *Criminal Code* 1899 (Qld) is exhausted, even if he now wishes to raise additional grounds not raised at his appeal to this court: see *Grierson v The King* (1938) 60 CLR 431. This Court has followed

that line of reasoning on many occasions since: see, for example, *R v Nudd* [2007] QCA 40 and, more recently, *R v Martin* [2015] QCA 2.

The applicant submits that *Grierson* and the cases which follow it are not applicable to this Court exercising criminal jurisdiction by reason of s 8(1) *Supreme Court Act* 1991 (Qld), now contained in the Constitution of Queensland 2001, s 58, which provides that the Supreme Court has all jurisdiction necessary for the administration of justice in Queensland. Neither that provision nor anything raised by the applicant in his written and oral submissions alters the requirement for this Court to follow the long-established principle set out by the High Court of Australia in *Grierson*; see *Martin* at [11].

The applicant has no further right of appeal to this Court against his conviction for the murder of his wife. His only possible recourse is an application for special leave to appeal to the High Court of Australia from this Court's decision dismissing his appeal against conviction, which would require an extension of time, or under the pardoning power referred to in s 672A *Criminal Code*. It would, therefore, be pointless to extend time to appeal against his conviction.

As to his application for an extension of time to appeal against sentence, not only is it about 10 months out of time, it has no prospects of success. The only sentence able to be imposed by way of punishment for the offence of murder is mandatory imprisonment for life: see section 305(1) *Criminal Code*.

It follows that the application for an extension of time to appeal against conviction and for leave to appeal against sentence must be refused.

MORRISON JA: I agree.

JACKSON J: I too agree.

THE PRESIDENT: That is the order of the Court. The application is refused.