

COURT OF APPEAL

**HOLMES CJ
PHILIP McMURDO JA
ANN LYONS J**

**CA No 156 of 2016
DC No 45 of 2015
DC No 67 of 2015**

COX, David Merton George

Applicant

v

COMMISSIONER OF POLICE

Respondent

BRISBANE

TUESDAY, 29 NOVEMBER 2016

JUDGMENT

HOLMES CJ: Mr Cox seeks leave under s 118 of the *District Court Act* to appeal against a decision of a District Court judge which upheld a Magistrates Court decision finding him guilty of a breach of a bail undertaking condition.

The condition in question was one which prohibited Mr Cox from contact with staff of the Breakfree Resort where he lived. On 9 May 2016 his appeal was dealt with in the District Court. The evidence before the magistrate had been that he had spoken to some staff about the slamming of a door and had held a lift door for a brief period, preventing a staff member from leaving. That evidence was not, in fact, disputed in the Magistrates Court hearing. Mr Cox there raised issues of provocation and his own ignorance of the meaning and effect of the condition in the bail undertaking. Similar points were made in the District Court. The

District Court judge found, as seems to have been inevitable on the evidence, that the case was made out. However, he did alter the sentence imposed on Mr Cox. The ultimate result was that there was no conviction recorded and no penalty imposed, but Mr Cox was required to pay \$250 in costs of the proceeding below.

Here, Mr Cox says, I should say in the first place, that he is not ready to argue his application for leave to appeal properly because he has been in custody for some weeks and has not had the Appeal Record. However, the judgment of the District Court was given on May 2016. Mr Cox was present when it was given. Had he sought promptly to obtain a transcript, it is difficult to see why he would not have obtained it before he went into custody, and there seems no basis, particularly in circumstances where there is no indication of any error in the judgment below, to adjourn to allow this matter to be the subject of further submissions by him.

His submissions made today are that the staff members of the Breakfree Resort appeared to be trying to provoke him. He had no idea that speaking amounted to contact for the purposes of the bail undertaking. He should, he says, have been given the benefit of the doubt because he had recently at the time of the incident lost his wife to cancer and he was suffering from depression. None of those things are indicative of any error in the District Court judgment. They are all matters relevant to penalty, which clearly were taken into account in that regard because, in effect, there was no penalty imposed on Mr Cox.

This is not an appropriate case for the grant of leave to appeal. There is no indication of any error in the District Court judge's judgment and the penalty imposed was, as I say, effectively non-existent, although Mr Cox complains, logically enough, that the breach will be held against him in future proceedings. Neither error of law nor manifest injustice being shown, there is no basis to grant the application for leave to appeal. I would refuse the application.

PHILIP McMURDO JA: I agree.

ANN LYONS J: I agree.

HOLMES CJ: The application for leave to appeal is refused. We will adjourn.