

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Leach* [2017] QCA 53

PARTIES: **R**  
**v**  
**LEACH, Jeffery Francis**  
(applicant)

FILE NO/S: CA No 227 of 2016  
DC No 484 of 2003

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction)

ORIGINATING COURT: District Court at Cairns – Date of Conviction: 22 January 2004

DELIVERED ON: 31 March 2017

DELIVERED AT: Brisbane

HEARING DATE: 25 November 2016

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

ORDER: **The application for an extension of time to file a Notice of Appeal against the convictions is refused.**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where the applicant was sentenced to terms of 6, 12 and 18 months’ imprisonment on two counts of stalking and one of wilful damage in January 2004 – where the applicant successfully appealed against his sentences on the two counts of stalking in June 2004 but did not then claim to be innocent of the charges – where more than 12 years then passed before the applicant sought to set aside all three convictions – where the applicant contended that his lawyer wrongly advised him to plead guilty – where the applicant explained his delay by reference to poverty, medical and mental health treatment and his attempts to contact members of the executive government to commute or overturn his sentence – where those attempts were wholly unsuccessful – where the applicant did not establish that his convictions upon his guilty pleas were the result of a miscarriage of justice and the applicant’s prospects on appeal were correspondingly weak – whether the application for extension of time in which to file a Notice of Appeal should be granted  
*Meissner v The Queen* (1995) 184 CLR 132; [1995] HCA 41, applied

*R v EJ* [2009] QCA 378, cited

COUNSEL: The applicant appeared on his own behalf  
D R Kinsella 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 McMurdo JA and the order proposed by his Honour.
- [2] **MORRISON JA:** I have read the reasons of McMurdo JA and agree with those reasons and the order his Honour proposes.
- [3] **McMURDO JA:** In the District Court in November 2003, the applicant was arraigned upon three counts: one of stalking, a further one of stalking with a circumstance of aggravation and one of wilfully and wilfully and unlawfully damaging a motor vehicle. He pleaded guilty to each and his sentence hearing was adjourned to enable a pre-sentence report to be prepared. In January 2004 he was sentenced to three concurrent terms of 12 months, 18 months and six months respectively.
- [4] The applicant successfully appealed against his sentences on the two counts of stalking. On 2 June 2004 this Court set aside those sentences because the sentencing judge had proceeded upon the basis that this offending had occurred whilst the applicant was on probation.<sup>1</sup> In fact the applicant had been on probation (for an unrelated offence, also one of stalking) when the period the subject of the first of these offences commenced. But Jones J, who gave the principal judgment in this Court, said that the “significant part of the offending behaviour” had not commenced until after the end of that probation period. This Court substituted sentences of nine months’ imprisonment for the stalking offences and ordered his release on probation for a period of three years. By then he had served the entirety of his six month sentence for the wilful damage offence.
- [5] More than 12 years then passed before the applicant filed the present proceedings, in which he seeks to have set aside all three convictions. He says that in truth he was innocent on all counts. He has filed an application for an extension of time in which to appeal against his convictions and a document which can be best understood as a notice of appeal. He blames his lawyer for wrongly advising him to plead guilty. As I will discuss, he has far from explained his delay in appealing against the convictions. He is without legal representation, as he was when he successfully challenged his sentences in this Court, when, of course, he said nothing to suggest that he was innocent.

### **The facts of the offences**

- [6] I will describe the factual basis upon which he was sentenced and re-sentenced, as discussed in the judgment of Jones J. The complainant was a young woman attending a tertiary institution as an international student. The applicant was older, being aged 34 to 36 at the time of the offences and 36 when sentenced. The complainant and the applicant were students in a class for which their lecturer suggested that the class exchange telephone numbers for the purposes of working

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<sup>1</sup> *R v Leach* [2004] QCA 189.

together. By that means he came to have her number which he began to call frequently asking her to go out with him. The complainant objected but he persisted. He began to arrive, uninvited, at her residence. He professed his love for her and despite her rejection, he persisted. She threatened to complain to the police and to the student association. After a short break, his conduct recommenced.

- [7] After lectures she had to ensure that she remained in the company of other students. He would often follow her to her workplace and would stare at her from outside the premises. Consequently she had to change her employment several times but he continued to locate her new employment where he continued the same conduct. He made threats against her, including one to have her deported. Ultimately she reported the conduct to police in May 2003. The applicant was charged with stalking and was granted bail in the Magistrates Court. A condition of the bail was that he not approach the complainant directly or indirectly. The conduct to that point became the subject of the first count.
- [8] Soon afterwards the applicant breached that condition of his bail on at least five occasions. In August 2003, the applicant's enrolment at the institution was terminated because of what was perceived to be his continuing harassment of the complainant. His response to that action was to himself lodge a complaint against her, in which he claimed that he had been the subject of discrimination on the basis of his gender.
- [9] On 20 September 2003, after a further incident at her workplace, she again contacted the police. The applicant was again arrested but this time remained in custody. Jones J said that whilst no actual physical violence was used against the complainant, she was justifiably concerned that he might do so. The conduct after he was bailed was the subject of the second count, the aggravating circumstance being that it was also in breach of that condition of his bail.
- [10] The third count involved the wilful damage of a car owned by a fellow student. This young man had made a statement to the police detailing some of the applicant's conduct which was relevant to the first count of stalking. On 10 September 2003 the applicant poured a type of fluid over that man's car, causing damage which cost about \$5,000 to repair.
- [11] Jones J referred to the applicant's previous conviction for stalking, which was an offence committed between February 1999 and August 2000. In that case, the complainant was another young woman with whom the applicant had become infatuated. There was a similar pattern of conduct towards her. He had even followed that young woman to Darwin when she visited there for a short period. He then had no criminal history and for that offence was sentenced to a period of probation.
- [12] In the present matters, the pre-sentence report included a report from a psychiatrist who described the applicant's personality disorders by saying that the applicant had "a general inability to empathise with others, obsessive compulsive ideation, poor future planning and psychopathy affective traits, narcissistic personality disorder and an unrealistically inflated view of his own self-controllabilities."

### **The applicant's delay**

- [13] Upon an application for an extension of time within which to appeal, the Court must consider whether there is a satisfactory explanation for the delay and whether it

would be in the interests of justice to grant the extension.<sup>2</sup> A failure to satisfactorily explain the delay need not be fatal to an application although it is an essential consideration.<sup>3</sup> An applicant bears the onus of proving the facts which are said to warrant an extension of time.<sup>4</sup>

[14] In a document filed in this Court described as a “Conviction Extension Form”, the applicant lists these matters as explaining the delay:

- “● Suffered from Cancer
- Number Terms of Imprisonment and Charges
- Disability Support Pension
- Education
- Mental Health Treatment
- Correspondence with Government X 4”

[15] The applicant’s submissions are in many respects far from clear and these purported explanations for his delay are not the subject of evidence. But it sufficiently appears that at times during this period of more than 12 years, he did suffer from cancer and receive treatment for his mental health and he did engage in extensive correspondence with, amongst others, Premiers and a former Prime Minister, in which he sought effectively the outcome which he now pursues in this Court. He has also undertaken some further studies. It may be accepted that his financial position has been weak and that he has received a pension. And as to further terms of imprisonment, his experience since these matters is not clear from his material, save that he makes extensive reference to his dispute with the law firm which acted for him when he was originally sentenced. This dispute resulted in a lawyer making his own complaint of stalking against the applicant.

[16] However some matters are clear. The first is that this is not a case where a delay in appealing can be explained by the discovery of fresh evidence or the rendering of recent legal advice which has revealed an arguable foundation for an appeal. Upon the applicant’s argument, he was always aware that he had not committed the offences of stalking because on the facts for which he would now contend, his contact with the complainant was not unwelcome. He says that he was aware of his innocence when he pleaded guilty, which he did only because of legal advice that it would be in his interests to do so. And upon his argument, he must have known of his innocence when he successfully appealed against sentence.

[17] In these circumstances he fails to demonstrate facts by which his delay could be explained satisfactorily.

### **Merit of the proposed appeal**

[18] Quite apart from his delay being unexplained, there is no merit in his proposed appeal because he could not demonstrate that his convictions were the result of a miscarriage of justice. The onus would be upon him to establish that a miscarriage

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<sup>2</sup> *R v Tait* [1999] 2 Qd R 667 at 668; *Puschenjak v Wade* [2002] QCA 190 [4] and *R v Buchanan* [2016] QCA 33 [36].

<sup>3</sup> *R v GV* [2006] QCA 394 [3].

<sup>4</sup> *R v Mrsic* [1998] QCA 470 at p 2.

of justice took place when the sentencing judge accepted and acted on his guilty plea.<sup>5</sup>

[19] In *Meissner v The Queen*, Brennan, Toohey and McHugh JJ said:<sup>6</sup>

“A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty. An inducement to plead guilty does not necessarily have a tendency to pervert the course of justice, for the inducement may be offered simply to assist the person charged to make a free choice in that person’s own interests. A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence.”

[20] In the same case Dawson J said:<sup>7</sup>

“It is true that a person may plead guilty upon grounds which extend beyond that person’s belief in his guilt. He may do so for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of a plea of guilty upon grounds such as these nevertheless constitutes an admission of all the elements of the offence and a conviction entered upon the basis of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. Ordinarily that will only be where the accused did not understand the nature of the charge or did not intend to admit he was guilty of it or if upon the facts admitted by the plea he could not in law have been guilty of the offence. But the accused may show that a miscarriage of justice occurred in other ways and so be allowed to withdraw his plea of guilty and have his conviction set aside. For example, he may show that his plea was induced by intimidation of one kind or another, or by an improper inducement or by fraud.”

[21] The applicant has put before this Court his correspondence with his then lawyers ahead of the sentence hearing, which reveals the legal advice which he then accepted. The first relevant letter is dated 25 September 2003, in which his lawyer wrote that he had reviewed the evidence against the applicant, including a videotape “which corroborated the Police allegations in respect of the comments about your perception of the relationship with the Complainant.” The lawyer confirmed his oral advice to the applicant that having reviewed that evidence, the case on the stalking charges was “compelling” and that if he pleaded not guilty and proceeded to a trial, he would most likely be found guilty “and in such circumstances there [is] a very real possibility that [he] would receive a custodial sentence.” The lawyer wrote that there were “reasonable prospects that the Police would accept a plea of guilty to

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<sup>5</sup> *R v EJ* [2009] QCA 378 [19].

<sup>6</sup> (1995) 184 CLR 132 at 141 (footnote omitted).

<sup>7</sup> *Ibid* at 157 (footnote omitted).

single charge of stalking, in respect of the entire time period, without any circumstance of aggravation in lieu of all charges, including the breach of Bail condition charges.” The lawyer went on to say that if the applicant pleaded guilty even to a single charge of stalking, with no circumstance of aggravation, he would still be at risk of receiving a custodial sentence having regard to his previous conviction for stalking and the allegations made by this complainant.

- [22] Obviously the lawyer failed to persuade the prosecution to proceed with only one charge. In a letter dated 13 November 2003, the lawyer wrote to confirm that the applicant’s instructions were to plead guilty to the stalking charges and the applicant’s further instructions that he had committed the offence of wilful damage. The letter recorded that with the applicant’s consent, he had been committed to the Cairns District Court for sentence upon these three charges. The applicant was arraigned and pleaded guilty two weeks later.
- [23] It plainly appears then that the applicant was induced to plead guilty to the stalking charges in the hope that he would receive a lower sentence, although he was not assured that it would be a non-custodial sentence. But that advice was not incorrect or improper in any way. The applicant made his own free choice as to what was in his interests. Even if, in truth, he was innocent, there was no miscarriage of justice by the exercise of that choice. There is no evidence that he misunderstood the charges or the alternatives which were open to him.
- [24] As for the offence of causing wilful damage, the correspondence evidences his instructions that he had committed this offence. There is no evidence now to suggest otherwise. There was no miscarriage of justice from this conviction upon his plea of guilty.

### **Conclusion and order**

- [25] His proposed appeal against his convictions would have no prospect of success. And he has failed to explain satisfactorily a delay of more than 12 years in seeking to challenge those convictions. I would order that the application for an extension of time to file a Notice of Appeal against the convictions be refused.