

COURT OF APPEAL

**McPHERSON JA
DERRINGTON J
WHITE J**

CA No 18 of 1998

THE QUEEN

v.

S

Applicant

BRISBANE

DATE 05/05/98

JUDGMENT

McPHERSON JA: This is an application to extend the time for appealing against a conviction of the applicant on an indictment charging him with rape. The delay is a problem for the applicant and it is not inconsiderable, but there appears to be a plausible explanation for it. If that were the only matter affecting the question, then I, for one, would be favourably disposed to grant the application to extend time.

The applicant's real difficulty is that there is nothing in any material we have been able to look at to suggest that there is any arguable basis for supposing the conviction was not correct. It seems, in the end, that the applicant did not deny that he had sexual intercourse with the complainant, who was a 14 year old girl and a relative, in the way of being a second cousin of the applicant.

His case at the trial, which involved him giving evidence himself, appears to have been that she consented to what was done. When reference is made to the injuries, of which there was medical evidence, which she has suffered, it appears extremely unlikely that that state of affairs was as he says it was; in other words, it is improbable that a girl of that age would have consented to having done to her those things that the applicant was alleged to have done.

In my view, the jury could have been in no doubt about the issue in the case. They arrived at their verdict on the basis of the evidence before them, after hearing all relevant witnesses. Without there being presented to us any material to make us doubt that the applicant was correctly convicted, I can see no basis on which we could grant this application.

I should add that the applicant also has on foot an application for leave to appeal against sentence. It was, it seems, lodged in time and there is no question about it on this occasion. It will no doubt come before this Court in due course. For my part, however, I can see nothing capable of persuading us to extend the time so as to enable the applicant to argue an appeal against conviction which, on the face of it, is doomed to fail. I would therefore dismiss the application.

DERRINGTON J: I agree.

WHITE J: I agree.

McPHERSON JA: The order of the Court is that the application to extend time within which to appeal against conviction is dismissed.