SUPREME COURT OF QUEENSLAND

CITATION:	*R v Ruff* [2003] QCA 345
PARTIES:	**R** **v** **RUFF, Michael Conrad** (applicant)
FILE NO/S:	CA No 193 of 2003 SC No 157 of 1973
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence)
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	8 August 2003
DELIVERED AT:	Brisbane
HEARING DATE:	8 August 2003
JUDGES:	Williams JA, Muir and Holmes JJ Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for extension of time refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – PRACTICE: AFTER CRIMINAL APPEAL LEGISLATION – MISCELLANEOUS MATTERS – QUEENSLAND – PROCEDURE – EXTENSION OF TIME, NOTICE OF APPEAL AND ABANDONMENT – where applicant sought leave for extension of time within which to appeal sentence – where sentence imposed in 1973 – where applicant on parole failed to appear – whether any good reason shown for delay – whether it is in the interests of justice to grant extension
COUNSEL:	The applicant appeared on his own behalf L J Clare for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

HOLMES J: The applicant, Michael Conrad Ruff, seeks an extension of time within which to appeal against a sentence imposed on 24 August 1973 when he was 18 years old. He

pleaded guilty to burglary and armed robbery in company and was sentenced to four years' imprisonment with hard labour.

The circumstances of the offence were that on 3 June 1973 he and two co-offenders broke into a shop at night in order to steal cigarettes. A 71 year old man was assaulted in the course of the break-in by the applicant's co-offenders causing him a wound which required stitches. Money, cigarettes and a rifle were stolen. At the time of the offence the applicant had been convicted in Queensland of offences of dishonesty and summary offences for which he had served a sentence of 12 months' imprisonment.

On 27 May 1976 the applicant was released on parole after serving two years and nine months of the four-year term. In August that year he failed to appear in the Brisbane Magistrates Court on a charge of housebreaking. On 19 August 1976 his parole was cancelled and a warrant issued but not executed. In October 2002, as part of what seems to have been a general clean-up exercise a fresh warrant was issued and was executed on the applicant in New South Wales on 11 February 2003.

During this period at large applicant was convicted nine times between 14 February 1977 and 30 December 1994 in New South Wales of driving offences and minor dishonesty and drug offences. He is presently 48 years old.

He argues that it is unjust and oppressive that he be required to serve the sentence imposed on him although, as imposed, it was not manifestly excessive because of the lapse of time since his offence. He says it is really the fault of the government that he has been at large so long and it is unreasonable now to require him to serve the balance of the sentence particularly given that it entails hardship not only to himself but also to his family. He says also that there is a public interest against interference with the liberty of an individual who has re-established himself in the community and he raises issues about the validity of the warrant on which he was apprehended and the lawfulness of his consequent imprisonment.

The principles governing applications for extension of time were considered in R v. Tait (1999) 2 Qd.R 667. The Court will examine whether there was any good reason shown for the delay and will consider whether it is in the interests of justice to grant the extension, which may involve some assessment of prospects. Here, the reason for the delay seems to be that the applicant had no complaint of his sentence as imposed but now, not surprisingly, does not wish to serve the balance of it. So the argument, as I say, is not with the sentence imposed but with the requirement that it now be served in full. That is not a basis on which the sentence could now be set aside; and questions about the validity of the warrant are not issues which can have any bearing on whether the sentence imposed in 1973 was excessive.

So far as public interest considerations are concerned I must say there is a good deal to be said for not permitting a person to avoid a penalty imposed on him by simply absconding. On the other hand, and no doubt the Parole Board will give consideration to this, there is also a great deal to be said for promoting rehabilitation by ensuring the continuity of the family relationship and a working life.

Mr Ruff has now served six months and the Board no doubt will give proper consideration to whether service of the remainder of the sentence is in the best interests of the community, given those aspects of rehabilitation; particularly given that the service of the sentence in Queensland entails physical separation for Mr Ruff from his family in New South Wales. But as I have said those considerations are not such as can have any bearing on whether the original sentence was appropriate. There are no prospects in my view that the appeal can succeed and accordingly, the application for an extension of time should be refused.

WILLIAMS JA: I agree.

MUIR J: I agree.

WILLIAMS JA: The order of the Court is that the application for extension of time within which to appeal is refused.

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