

SUPREME COURT OF QUEENSLAND

CITATION: *R v Lumley* [2003] QCA 351

PARTIES: **R**
v
LUMLEY, Christopher Edmonston Ferneaux
(applicant)

FILE NO/S: CA No 127 of 2003
DC No 324 of 2002

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction)

ORIGINATING COURT: District Court at Southport

DELIVERED EX TEMPORE ON: 12 August 2003

DELIVERED AT: Brisbane

HEARING DATE: 12 August 2003

JUDGES: Williams and Jerrard JJA and Muir J
Separate reasons for judgment of each member of the Court,
each concurring as to the orders made

ORDERS: **1. Application for extension of time within which to
appeal granted**
**2. Time extended for filing a notice of appeal until 15
July 2003**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND
INQUIRY AFTER CONVICTION – APPEAL AND NEW
TRIAL – PRACTICE: AFTER CRIMINAL APPEAL
LEGISLATION – MISCELLANEOUS MATTERS –
QUEENSLAND – PROCEDURE – EXTENSION OF TIME,
NOTICE OF APPEAL AND ABANDONMENT – where
notice of appeal against conviction filed out of time – where
applicant had given instructions to legal representatives to
appeal – where no fault of applicant that notice was filed out
of time – whether the court should review the conviction on
its merits

COUNSEL: A J Rafter with A J Donaldson for the applicant
C W Heaton for the respondent

SOLICITORS: Russo Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the
respondent

WILLIAMS JA: On or about the 4th of March 2003 the applicant was convicted of the offences of rape and torture. He was not sentenced until the 4th of April 2003.

A notice of appeal against conviction and notice of an application for leave to appeal against sentence was filed on the 28th of April 2003. That notice was within time so far as sentence was concerned, but was out of time so far as the appeal against conviction was concerned. An amended notice was filed on the 15th of July 2003.

It appears that at all times the applicant had given instructions to his then legal representatives to appeal and it was through no fault of his that the notice was initially filed out of time.

In the circumstances the Crown accepts the explanation given for the failure and concedes that it is an appropriate case in which the Court should review the conviction on the merits.

In the circumstances there will be an order extending the time for filing a notice of appeal until the 15th of July 2003.

JERRARD JA: I agree.

MUIR J: I agree.
