

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Kawada* [2004] QCA 274

PARTIES: **R**  
**v**  
**KAWADA, Hiromi**  
(applicant)

FILE NO/S: CA No 187 of 2004  
DC No 110 of 2003

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 3 August 2004

DELIVERED AT: Brisbane

HEARING DATE: 3 August 2004

JUDGES: McMurdo P, Williams JA and Dutney J  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for an extension of time within which to apply for leave to appeal against sentence refused**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – PRACTICE: AFTER CRIMINAL APPEAL LEGISLATION – MISCELLANEOUS MATTERS – QUEENSLAND – PROCEDURE – EXTENSION OF TIME, NOTICE OF APPEAL AND ABANDONMENT – where applicant Japanese national convicted on guilty plea of offences of false pretences, improper use of position, acting dishonestly in the exercise of powers as an officer of a company, misappropriation and forgery – where sentenced to ten years imprisonment with recommendation for parole after serving three years and four months – where loss to employer of approximately \$10 million – whether an extension of time should be granted within which to apply for leave to appeal against sentence

COUNSEL: The applicant appeared on his own behalf  
F J Walsh for the respondent

SOLICITORS:       The applicant appeared on his own behalf  
                      Director of Public Prosecutions (Commonwealth)for the  
                      respondent

THE PRESIDENT:   The applicant, Mr Kawada, who represents himself in this application for an extension of time for leave to appeal against sentence, is a Japanese National whose first language is not English. Despite that fact he has presented his application today in an ordered, logical, clear and relevant manner.

He pleaded guilty to one offence of false pretences, two offences of improper use of position as an officer of a company, two offences of acting dishonestly in the exercise of powers as an officer of the company, one offence of making a false statement as an officer of the company, five counts of misappropriation and five counts of forgery.

On 3-5 March 2003, contested sentencing proceedings took place and he was ultimately sentenced on 13 March 2003 to an effective sentence of 10 years imprisonment with a recommendation that he be eligible for post prison community based release after serving three years and four months of his sentence. The maximum penalty on the most serious offences, those of misappropriation, was 10 years but the sentence imposed was a global one taking into account all the offending behaviour.

His application for an extension of time was not filed until 22 June 2004 so that it was about 14 months out of time. By

way of explanation for this very extensive delay, Mr Kawada says that he was in a state of shock at the severity of his sentence and the trauma of entering prison so that he was depressed and isolated from other prisoners because of his language barrier. He did not understand his legal right to appeal against his sentence and received no special assistance for his language difficulties. In fact, in his oral submissions today it seems that his real reason for now bringing this application is that he thought he would be deported to Japan on his parole eligibility date but has recently realised that his release date is dependent on the Parole Board's discretion and so he initiated these proceedings.

He wishes to argue if given an extension of time that the sentence was manifestly excessive, that the learned trial Judge erred by taking too high a starting point when commencing the sentencing procedure and that the Prosecutor inadvertently misled the sentencing judge as to the quantum on the amount involved in the first six counts on the indictment.

Mr Kawada was represented at sentence by an experienced barrister and solicitor and it seems unlikely that he was not aware of his appeal rights. The information he has placed before this Court is not on oath or affirmation. When giving evidence at his trial he indicated that he spoke English well and did not require an interpreter. He gave evidence in English which is recorded in over 50 pages of transcript.

On the facts found by the learned primary Judge after a lengthy contested hearing the amount involved in the offending behaviour was more than \$27 million although the property dissipated by the criminal conduct was in the vicinity of \$10.3 million, only \$33,000 of which was personal gain to Mr Kawada. It seems he committed the offences in an attempt to recoup losses made by the companies and was hoping that the profits would then go to his employer Mr Yazawa. He received very little personal gain but the grossly deceitful offences involved a high degree of sophistication and a huge amount of property.

He was 54 years old at sentence and had no previous convictions.

Mr Kawada has not demonstrated on admissible evidence any good reason for the very considerable delay in his application for leave to appeal against sentence. Bearing in mind the number and seriousness of the offences and the amount of property involved, his prospects of success in any appeal against sentence are not promising. He has not shown sufficient grounds to warrant the granting of an application for an extension of time within which to apply for leave to appeal against sentence.

I would refuse the application but wish to make this observation. Mr Kawada states he is anxious to return to his wife and family in Japan who have forgiven him for his sins. He wants to re-establish his family life and his career and

hopes to repay his former employer Mr Yazawa, the victim of his crime, in accordance with his Zen Buddhist beliefs. Providing those statements are genuine and his behaviour in prison has been acceptable it would seem to be in everyone's interest that he be able to return to Japan as soon as possible after becoming eligible for parole.

WILLIAMS JA: I agree.

DUTNEY J: I agree.

THE PRESIDENT: That is the order of the Court.

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