

SUPREME COURT OF QUEENSLAND

CITATION: *R v Moodie* [2004] QCA 289

PARTIES: **R**
v
MOODIE, David Faine
(applicant)

FILE NO/S: CA No 190 of 2004
DC No 56 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 6 August 2004

DELIVERED AT: Brisbane

HEARING DATE: 6 August 2004

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

ORDER: **Application for extension of time within which to appeal against sentence dismissed**

CATCHWORDS: CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - CIRCUMSTANCES OF OFFENCE - where the applicant pleaded guilty to six counts of fraud with circumstances of aggravation, nine of fraud, one of bringing stolen goods into Queensland, two of stealing and one of attempted fraud - where the applicant seeks an extension of time within which to seek leave to appeal - whether the applicant's explanation for delay was adequate - whether there are real prospects of success if the extension were granted

COUNSEL: Applicant appeared on his own behalf
D L Meredith for respondent

SOLICITORS: Applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: On 16 January 2004, the applicant pleaded guilty in the District Court to six counts of fraud with circumstances of aggravation, nine of fraud, one of bringing stolen goods into Queensland, two of stealing and one of attempted fraud. In addition to those offences, the learned sentencing judge had before him a schedule under s 189 of the *Penalties and Sentences Act* which contained a further 67 counts of dishonesty all involving fraud or attempted fraud. He was asked to take this into account in imposing the sentence which he did which was imposed on the same day.

These were sentences of five and half years imprisonment on each of the six counts of fraud with circumstances of aggravation, two years imprisonment in respect of each of the other counts of fraud and also two years for the count of bringing stolen goods into Queensland, two years imprisonment on the count of stealing and imprisonment for one year on the count of attempted fraud. All of those terms of imprisonment were to be served concurrently. The learned sentencing judge recommended that the applicant be considered for post-prison community based release after serving half of that maximum time, namely two years and nine months. He declared that 261 days in custody from 1 May 2003 to 16 January 2004, in respect only of these offences, to be time served under those sentences.

The applicant failed to seek leave to appeal against those sentences within the time provided and it was not until 23

June 2004 that he filed a notice of application for extension of time within which to seek leave to appeal. This is the hearing of that application.

The applicant's only explanation for this substantial delay in his original outline was that upon receiving his sentence he was in a state of shock and disbelief as to its severity; that he made several requests for his previous solicitors to attend him in Arthur Gorrie prison but he was unsuccessful in these requests; and it was only after 28 days had expired that he was informed that an application for an extension of time could be made.

Today, he added in his further outline the difficulty which he encountered in the prison environment to obtain any advice about an application for leave to appeal against sentence or an extension of time. These, even taken together, are in my opinion a plainly inadequate explanation for the delay. One needs no legal advice in order to simply put in an application for leave to appeal against sentence, which he could have done.

His failure to give any adequate explanation would, in my opinion alone, justify this Court in dismissing this application. However it is also the case, in my opinion, that even if the application for extension of time were granted an appeal against sentence would have no real prospects of success.

The applicant is 59 years of age with a very extensive criminal history commencing as far back as 1966. It is unnecessary for me to set this out but it appears that, except for an apparent gap between the end of the 1960's and 1981, the applicant has been a constant offender in various offences involving dishonesty, mostly fraud.

On 15 November 1996 he was sentenced to four years imprisonment for a large number of offences of dishonesty. It was only shortly after his release from prison in 1999 that the current offences commenced. The total of nett losses arising from the subject spate of offences which extended over three and a half years was in the order of the \$187,000 and this was after substantial amounts of money were recovered.

The dishonesty involved was described by the learned sentencing judge as persistent and premeditated attempts to defraud involving extensive use of aliases and obtaining credit cards in false names. The learned sentencing judge thought that a starting point for an appropriate sentence was seven years imprisonment. He then adopted a figure of five and a half years to make some allowance for the applicant's plea of guilty on his rather low level assistance to police.

I do not think that either the notional sentence at which his Honour arrived or the final sentence which his Honour imposed, having regards to the plea of guilty were outside the range of a sound discretionary sentence. Indeed they seem to me to be appropriate having regard to the large number of offences, the

extent of premeditation involved in their commission and the applicant's age and substantial criminal history.

For all of those reasons, I would dismiss the application.

THE PRESIDENT: I agree.

HELMAN J: I agree.

THE PRESIDENT: The order is as proposed by Justice Davies.
