SUPREME COURT OF QUEENSLAND

CITATION:	*Rodgers v Smith* [2006] QCA 353
PARTIES:	**WILLIAM JOHN RODGERS** (applicant/applicant) **v** **BRETT JOHN SMITH** (respondent/respondent)
FILE NO/S:	CA No 19 of 2006 DC No 1562 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	15 September 2006
DELIVERED AT:	Brisbane
HEARING DATE:	14 August 2006
JUDGES:	Jerrard and Keane JJA and Mullins J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal refused**
CATCHWORDS:	APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND PROCEDURE - QUEENSLAND - WHEN APPEAL LIES - BY LEAVE OF COURT - before an acting magistrate applicant convicted of possession of two category H weapons other than in accordance with the authority of a licence and without other lawful authority, justification or excuse - applicant's appeal to District Court dismissed - applicant seeks leave to appeal to this Court - whether an appeal is necessary to correct substantial injustice to applicant and whether there is reasonable argument that there is an error to be corrected *District Court of Queensland Act 1967* (Qld), s 118(3) *Pearson v Thuringowa City Council* [2005] QCA 310; (2005) 142 LGERA 257, cited *Pickering v McArthur* [2005] QCA 294; Appeal No 4013 of 2005, 16 August 2005, applied
COUNSEL:	The applicant appeared on his own behalf R G Martin SC for the respondent

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

[1] **JERRARD JA:** I respectfully agree with the reasons for judgment of Keane JA, and the order proposed by His Honour.

[2] **KEANE JA:** The applicant seeks leave to appeal from the decision of McGill DCJ of 21 December 2005 whereby his Honour dismissed the applicant's appeal from a decision of an acting magistrate. On 19 March 2004, the acting magistrate had convicted the applicant after a summary trial of a contravention of the *Weapons Act 1990* (Qld) in that he was in possession of two category H weapons other than in accordance with the authority of a licence and without other lawful authority, justification or excuse. A conviction was recorded, a fine of $650 was imposed, the applicant was allowed nine months to pay, and the applicant was disqualified from holding or obtaining a weapons' licence for three years. The respondent to this application is a police officer involved in the apprehension of the applicant.

[3] The applicant had admitted at his trial that he was in possession of the firearms.[1] He had a licence to have possession of and use the weapons at an approved shooting range, but when they were not in use at an approved shooting range they were to be kept in secure storage. When the applicant was found in possession of the weapons, he was not at an approved shooting range but, as McGill DCJ put it, was "wandering around the bush looking for a horse".[2] The applicant's conviction was fully justified by his own evidence.

[4] The applicant now seeks leave to appeal pursuant to s 118(3) of the *District Court of Queensland Act 1967* (Qld). It is well settled that "[l]eave will usually be granted only where an appeal is necessary to correct a substantial injustice to the applicant, and there is a reasonable argument that there is an error to be corrected".[3] The statutory restriction on appeals to this Court:

> "serves the purpose of ensuring that this Court's time is not taken up with appeals where no identifiable error or injustice can be articulated by those litigants whose arguments have already been fully considered at two judicial hearings."[4]

[5] In my view, the present application meets neither of the usual requirements for the grant of leave to appeal.

[6] The reasons of the learned District Court judge carefully and comprehensively addressed each of the points raised before his Honour. The applicant did not identify any error in those reasons.

[7] On this application for leave to appeal, the applicant was unrepresented. In his written material, the assertion which formed the ground of appeal which he seeks to agitate was that the learned judge "supported the crown throughout the whole appeal hearing and acted as crown prosecutor" (sic). The applicant did not articulate a

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1 *Rodgers v Smith*, unreported, DC No 1562 of 2004, 21 December 2005 at [40] - [44].
2 *Rodgers v Smith*, unreported, DC No 1562 of 2004, 21 December 2005 at [4].
3 *Pickering v McArthur* [2005] QCA 294 at [3] (internal citations omitted).
4 *Pearson v Thuringowa City Council* [2005] QCA 310 at [14].

coherent legal basis in support of this ground. Reference to the transcript of the hearing does not disclose any arguable support for that assertion.

[8] The applicant admitted to the judge that he had admitted at the trial that he had been in possession of the weapons as charged. That admission was freely made by the applicant. To the extent that his Honour asked questions of the applicant in the course of the applicant's submissions, it is clear that his Honour was trying to focus the applicant's attention on the relevant issue; which was whether the applicant's possession of the weapons was a breach of his licence. His Honour afforded the applicant every opportunity to make and develop his arguments, and neither during nor at the conclusion of the hearing did the applicant express any dissatisfaction with the conduct of the hearing.

[9] Furthermore, the applicant's contention as to why leave to appeal should be granted was that:

> "this case is full-related to a drug related charge that I was unlawfully convicted of in 2002 the same evidence was attempted to be used and this is where perjury has been committed by the same police officers. Fresh evidence has now come to hand from this charge, which proves that I was framed on the drug related charge that will now allow me to prepare all of these charges to the High Court of Australia this was made known to the appeal Judge." (sic)

[10] This contention, and the general tenor of the applicant's submissions, involved tangential consideration of the applicant's drug convictions.[5] It need not be emphasised that this application was not concerned with the propriety of the drug convictions. Nothing in the nature of "fresh evidence" was adduced before this Court.

[11] At the hearing of the application for leave to appeal, the applicant acknowledged that he had "shot [himself] … in the foot" with his own evidence at the trial of the charges under the *Weapons Act*. The applicant suggested that, if he could secure a retrial on these charges, he would give different evidence: "I'll change my evidence … like the police did." It is difficult to know whether the applicant intended this suggestion to be taken seriously, but, on any view, it affords no reason to think that the applicant has suffered any substantial injustice, much less an injustice such as would warrant the grant of leave to appeal.

Conclusion and order

[12] The applicant has not shown that this is an appropriate case for the grant of leave to appeal. The application for leave to appeal should be refused.

[13] **MULLINS J:** I agree with Keane JA.

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5 See *R v Rodgers & Dowling* [2003] QCA 99; CA Nos 179 and 200 of 2002, 14 March 2003.