SUPREME COURT OF QUEENSLAND

CITATION:	*R v Hatten* [2006] QCA 359
PARTIES:	**R** **v** **HATTEN, Sean Stephen** (applicant)
FILE NO/S:	CA No 43 of 2006 CA No 284 of 2005 SC No 323 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence)
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	20 September 2006
DELIVERED AT:	Brisbane
HEARING DATE:	20 September 2006
JUDGES:	Holmes JA and Jones and Mullins JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**Application to set aside notice of abandonment is allowed, and the application for leave to appeal against sentence is reinstated**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN GRANTED – where indefinite sentence imposed on applicant – where applicant originally filed notice of appeal against sentence in time but later abandoned that application – where applicant young with borderline IQ – where some merit to appeal in light of psychiatric evidence and legal authority – whether extension of time should be granted *R v Tabe* [1983] 2 Qd R 60
COUNSEL:	The applicant appeared on his own behalf S G Bain for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland), for the respondent

HOLMES JA: The applicant seeks an extension of time within which to seek leave to appeal against his sentence in circumstances in which his original application for leave to appeal against sentence was abandoned, but it seems to me that his application is more appropriately treated as an application to have the abandonment set aside and the application for leave to appeal reinstated under Rule 69 of the Criminal Practice Rules.

On the 3rd of October 2005, an indefinite sentence was imposed on the applicant on one count of attempted murder pursuant to Section 163 of the *Penalties and Sentences Act (1992)*. A nominal sentence of 15 years imprisonment as required by Section 163(2) of the Act was imposed. 239 days spent in pre-sentence custody was declared. The learned Sentencing Judge exercised his discretion not to declare the full period spent by the applicant on remand on the charge.

The applicant had originally filed a notice for leave to appeal against his sentence on 1st of November 2005 within time. On 4th of January 2006, he filed a notice of abandonment of that application. However, on the 20th of February 2006 he filed an application for extension of time.

He is now unrepresented, Legal Aid not being forthcoming for the current application and he originally sought an adjournment of it. I was not, as I indicated, disposed to adjourn the application and he proceeded to give us his argument on it. The basis for that declining of the

adjournment was simply this: that the applicant has had ample opportunity to prepare as best he can and there is no prospect of his being represented at a later date. There is an appeal book before the Court, presumably prepared for the earlier application which enables some preliminary assessment of the matter.

The applicant's abandonment of his original application for leave to appeal is not very coherently explained. He says he had difficulty communicating with his legal representatives and was concerned about the effect of media attention around the time of his sentencing. He seems to have had the idea that a notice of abandonment was the appropriate way of deferring his sentence until the media interest had died down and that he would perhaps be able to get a fresh legal team by starting anew.

It is relevant to note that the applicant, who is now 22, was assessed by a psychologist in 1999 as having a full-scale IQ within the borderline range, with his overall abilities ranked below the second percentile.

Applying the principles set out in *R v Tabe* (1983) 2 QdR 60, I would accept that the decision to abandon the application for leave was not the result of a deliberate and informed decision. There may be some merit to the appeal; there was, in the view of Dr Grant who gave evidence on the sentence, some prospect of maturation over a period of 10 to

20 years which might ameliorate a personality disorder of the type the applicant suffers from. In the light of the High Court's decision in *Buckley* (2006) 224 ALR 416, in which emphasis is placed on consideration of the protective effect of a lengthy, finite term, there is some scope, at least, for argument as to whether that aspect of the evidence was appropriately taken into account in conjunction with the 15 year term actually imposed here.

It is not necessary to consider those matters further. Suffice it to say that I would allow the application as one to set aside the notice of abandonment and reinstate the application for leave to appeal. I might add that it is plain that the Court would be considerably assisted were Legal Aid to appear on the applicant's behalf on his application for leave to appeal against sentence.

JONES J: Yes, I agree.

MULLINS J: I agree.

HOLMES JA: Mr Hatten, what that means is that you will be able to go ahead with your application for leave to appeal. You should very promptly put in an application for Legal Aid.

APPLICANT: Your Honour.

HOLMES JA: Thank you. We can end the connection. Thanks, Ms Bain.

MS BAIN: Thank you, your Honour. I'll also undertake to raise the matter with the Legal Aid office.

HOLMES JA: Oh, that would be helpful. Thank you.

MS BAIN: Or, bring the matter to their attention.

HOLMES JA: Thank you.
