

SUPREME COURT OF QUEENSLAND

CITATION: *Wilson v Raddatz* [2006] QCA 392

PARTIES: **WILSON, Gregory**
(applicant)
v
RADDATZ, Warren Neil
(respondent)

FILE NO/S: CA No 276 of 2006
DC No 5 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Maryborough

DELIVERED EX TEMPORE ON: 10 October 2006

DELIVERED AT: Brisbane

HEARING DATE: 10 October 2006

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

ORDER: **Application for extension of time in which to apply for leave to appeal refused with costs**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL-PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – where applicant was found guilty in Magistrates Court of clearing native vegetation on his freehold land without a permit – where applicant appealed to District Court but his appeal was dismissed with costs – where applicant applied for leave to appeal from District Court order but his application was out of time – where applicant now seeks an extension of time within which to apply for leave to appeal under s 118 *District Court of Queensland Act 1967* (Qld) – where applicant has given no satisfactory explanation for why he did not file his application for leave to appeal within the required time – whether the judgment sought to be appealed from was plainly wrong – whether the interests of justice support the extension of time sought – whether applicant would have any prospects of success in his application for leave to appeal

District Court of Queensland Act 1967 (Qld), s 118

Integrated Planning Act 1997 (Qld), s 4.3.1, s 4.3.18

Bone v Mothershaw [2002] QCA 120; CA No 294 of 2001,
12 April 2002, applied

Burns v State of Qld & Anor [2006] QCA 235; Appeal No
526 of 2006, 23 June 2006, applied

COUNSEL: The applicant appeared on his own behalf
D J Grealy for the respondent

SOLICITORS: The applicant appeared on his own behalf
Department of Natural Resources and Water (Queensland)
for the respondent

THE PRESIDENT: The applicant, Mr Wilson, was charged by complaint with a breach of s 4.3.1(1) *Integrated Planning Act 1997 (Qld)* ("the IPA") that between 1 January 2002 and 30 July 2003 at North Aramara he started an assessable development, namely clearing of native vegetation on freehold land without a development permit for the development. He pleaded not guilty in the Magistrates Court at Maryborough on 1 February 2004. His case was heard in that court on 1 June 2004. On 3 August 2004 the Magistrate found him guilty, did not record a conviction, fined him \$7,500 and ordered him to pay \$62.25 costs of court, in default of payment six months imprisonment. He also ordered him to pay \$10,265.33 costs of investigation and prosecution, in default of payment levy to be made by execution against his goods and chattels. Mr Wilson was given six months in which to pay the fine and costs. He appealed from that order to the District Court under s 222 *Justices Act 1886 (Qld)*. The appeal was heard in the District Court on 24 August 2005 and was dismissed that day with an order that Mr Wilson pay the respondent's costs.

On 19 May 2006 Mr Wilson filed in this Court an application under s 118 *District Court of Queensland Act 1967* (Qld) for leave to appeal from the District Court judge's order. Because that application was about one year out of time, it was incompetent. On 22 September 2006 Mr Wilson filed an application for an extension of time within which to apply for leave to appeal.

Nowhere in that application nor in his supporting material has he given any satisfactory explanation as to why he did not file his application for leave to appeal within the required time. The absence of any satisfactory explanation for the lengthy delay in bringing this application means that this Court would only grant it if the judgment sought to be appealed from was plainly wrong and the interests of justice clearly supported the extension of time.

Mr Wilson is not legally represented. He has filed lengthy written submissions which are not entirely easy to follow and which he tells us have been prepared by a Mr Walter, who is not a legal practitioner, for payment. In essence his contentions seem to be, as they were before the District Court judge, that he should not have been found guilty of breaching s 4.3.1(1) of the IPA because the Queensland Parliament could not validly enact the IPA nor the *Vegetation Management Act 1999* (Qld) which, in combination with the *Integrated Planning Regulation 1998* (Qld), have the effect of restricting the clearing of vegetation on freehold land, because the grant in fee simple of his freehold land does not contain a reservation

restricting the clearing of the vegetation. That argument has previously twice been rejected by this Court. See *Bone v Mothershaw* [2002] QCA 120; CA No 294 of 2001, 12 April 2002, McPherson JA at [27], to which the District Court judge referred in his reasons and in respect of which an application for special leave to appeal to the High Court was refused, and, more recently, *Burns v State of Qld & Anor* [2006] QCA 235; Appeal No 526 of 2006, 23 June 2006, especially at [6], [13] and [18].

Mr Wilson in his oral submissions also challenged the authority of Mr Raddatz to bring the complaint against him under the IPA but Mr Raddatz had apparent power to do so under s 4.3.18 of the IPA. That submission also seems to be without merit.

Mr Wilson has not demonstrated that the District Court judge was wrong to refuse his appeal from the Magistrate's finding of guilt. This Court's observations in *Bone* and *Burns*, to which I have referred, plainly support the conclusions of both the learned District Court judge and the Magistrate. It would be futile in those circumstances to extend time as the application for leave to appeal does not appear to have any prospects of success. It follows that Mr Wilson has not shown any grounds to justify the granting of an extension of time within which to apply for leave to appeal. The application should be refused with costs.

WILLIAMS JA: I agree.

HOLMES JA: I agree.

THE PRESIDENT: I would also add that a transcript should be prepared of today's proceedings and sent to the Principal Registrar and Administrator of the Court to review and consider referring on to the appropriate authorities for further action if warranted.
