SUPREME COURT OF QUEENSLAND

CITATION:	*R v Christensen* [2007] QCA 370
PARTIES:	**R** **v** **CHRISTENSEN, Kim Soborg** (applicant)
FILE NO/S:	CA No 169 of 2007 SC No 764 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence)
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	29 October 2007
DELIVERED AT:	Brisbane
HEARING DATE:	29 October 2007
JUDGES:	de Jersey CJ, Muir JA and Dutney J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Application for extension of time refused** **2. Order pursuant to s 572(3) of the Criminal Code that the indictment be amended to substitute "twenty-second day of December 2003" for "sixteenth day of January 2001"**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – where applicant pleaded guilty to money laundering – where offence committed while serving a 10 year term of imprisonment – where applicant sentenced to a cumulative 15 month term for money laundering – where applicant's previous application to reopen sentence dismissed – where no explanation for substantial delay in filing current application for leave to appeal against sentence – where no reasonable prospect of success – whether application for extension of time should be allowed CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – INFORMATION, INDICTMENT OR PRESENTMENT – AMENDMENT – IMMATERIALITY OR ABSENCE OF PREJUDICE – where indictment charged

offender with offence commencing in 2001 – where conduct constituting offence occurred after January 2004 – where amendment of date will not prejudice prisoner – whether amendment of indictment should be allowed

Criminal Code Act 1899 (Qld), s 572
Criminal Proceeds Confiscation Act 2002 (Qld), s 250, s 260

R v Fahey, Solomon and AD [2002] Qd R 391; [2001] QCA 82, CA Nos 295, 305, 345, 436 of 2000, 9 March 2001, cited

COUNSEL:	The applicant appeared on his own behalf M J Copley for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Qld) for the respondent

THE CHIEF JUSTICE: On the 20th of March last year, the applicant pleaded guilty to the offence of money laundering. He was represented at the sentencing hearing.

As the case was presented, he had laundered sums, totalling approximately $120,000, at times when he was serving a 10 year term of imprisonment for the offence of carrying on a business of trafficking in amphetamines and cannabis.

For the trafficking offence, he was sentenced on the 1st of November 2001. It was on the 20th of March 2006 that he was sentenced to a cumulative 15 month term for the laundering with eligibility for parole fixed, if it be necessary, at the one-half point.

The sentencing Judge expressly acknowledged totality considerations. He acknowledged that there were no comparative sentences, but allowing for the brazenness of the offending while in custody, plainly moderated the

penalty in circumstances where, equally plainly, it had to be served cumulatively.

Following the imposition of that penalty on the 20th of March 2006, the applicant sought to reopen the sentence. On the 20th of July 2007, the application for reopening was dismissed by the Judge who had imposed the sentence.

On the reopening application, the applicant sought to raise many matters, many of which he now seeks again to ventilate. The applicant now seeks an extension of time within which to apply for leave to appeal against sentence.

He has raised many matters. Some of them are the hardship of his servitude, the consequent destruction of his family links, that he is serving his term in a high security jail, whether he was fairly charged in the first place, whether he was unfairly influenced to plead guilty (allegations for which there is no evidentiary support), a host of matters relating to the police investigation and the details of the case against him, and matters relating to confiscation of moneys.

None of those matters is a matter which could properly influence this Court in a review of the penalty imposed on the 20th of March 2006. In particular, I should say that the sentencing Judge was obliged to ignore the pecuniary penalty order: see section 260 of the Criminal Proceeds Confiscation Act 2002.

On the face of things and allowing for the 20 year maximum, the penalty imposed in March last year, 15 months' imprisonment, was very moderate, and I should say, I do not say that in any degree critically of the sentencing Judge.

The circumstance that the applicant was already subject to a 10 year term, obviously called for moderation in a term to be imposed cumulatively on the 20th of March 2006, but that said, the absence of any explanation for the applicant's delay in bringing this application, delay which has accumulated over some 15 months, assumes substantial significance.

Of some interest is that, in that time, he sought a reopening on untenable grounds. One surmises he may have felt his prospect via that avenue to have been greater than via appeal. The considerations, of course, are very different, but his decision to seek a re-opening, rather than applying for leave to appeal within time in the usual way does, at this point, assume some significance.

I would refuse the application for the extension of time because of the absence of any reasonable explanation for that very substantial delay, in the context of there being no reasonable prospect anyway of success were leave to appeal granted.

There should additionally be an order pursuant to section 572(3) of the Criminal Code that the indictment be amended

to substitute, "22nd day of December 2003" for "16 January 2001."

The charged offence was brought under section 250 of the Criminal Proceeds Confiscation Act. That section came into operation on the 1st of January 2003. The conduct relied on to constitute the charged offence all occurred after January 2004.

The amendment may be allowed now: see Fahey [2002] 1 Queensland Reports 391 at 398. It is important the indictment be amended so that the public record is accurate. The amendment will occasion no injustice or even prejudice to the applicant prisoner.

It amounts to no more than a clerical correction, but it is, nevertheless, one which should, in the interests of accuracy, now be made.

MUIR JA: I agree.

DUTNEY J: I agree.

THE CHIEF JUSTICE: The orders are as I have indicated.

(Subsequently amended, on page 2, to insert "20th of July 2007" for "30th of October 2006" (line 50), and on page 3, to

delete: "On the 2nd of March 2007, the Court of Appeal dismissed a challenge to the refusal to reopen" (line 1).)