

COURT OF APPEAL

**McMURDO P
KEANE JA
McMEEKIN J**

**CA No 196 of 2008
DC No 420 of 2006**

THE QUEEN

v

O'BRIEN, Alan Terry

Applicant

BRISBANE

DATE 30/10/2008

JUDGMENT

KEANE JA: On 31 May 2007, the applicant was convicted on his own plea of one count of burglary, one count of rape, and one count of stealing. He was sentenced to concurrent terms of imprisonment, the longest of which was 14 years for the rape.

The applicant appealed to this Court against these convictions even though he had pleaded guilty, and sought leave to appeal against the severity of his sentence. The appeal and the application were dismissed by this Court on 20 June 2008. See *R v O'Brien* [2008] QCA 163.

The applicant now seeks an extension of time within which to appeal against his convictions and sentence. It is said that new evidence is available which was "not present during the committal hearing", and that he lacked "proper legal representation".

The right of appeal to this Court is conferred by section 668D of the *Criminal Code* 1899 (Qld). It is well established that once this Court has decided an appeal on its merits, the right

of appeal so conferred is exhausted, and this Court has no jurisdiction to entertain a further appeal. See *R v Nudd* [2007] QCA 40; *R v Mam* [2005] QCA 323; and *Grierson v The King* (1938) 60 CLR 431 at 435.

The same approach is applicable to applications for leave to appeal against sentence. See *R v Senior* [2005] QCA 21.

Since this Court has no jurisdiction to entertain any further appeal by the applicant, it would be futile to grant his application for an extension of time within which to appeal.

Accordingly, the application for an extension of time should be refused.

THE PRESIDENT: I agree.

McMEEKIN J: I agree.

THE PRESIDENT: The application for an extension of time is refused.