

SUPREME COURT OF QUEENSLAND

CITATION: *R v Falzon* [2012] QCA 79

PARTIES: **R**
v
FALZON, Michael Paul
(applicant)

FILE NO/S: CA No 8 of 2012
SC No 889 of 2008

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction)

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 2 April 2012

DELIVERED AT: Brisbane

HEARING DATE: 2 April 2012

JUDGES: Fraser JA and Mullins and Ann Lyons JJ
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. Application for extension of time within which to appeal is dismissed**
2. Application for leave to appeal against conviction is dismissed

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where applicant convicted of drug offences after trial before a jury – where applicant had appealed against conviction – where appeal has been dismissed on the merits – where applicant sought an extension of time within which to file a second appeal against conviction – whether the court had jurisdiction to hear a second appeal

Criminal Code 1899 (Qld), s668D
Grierson v The King (1938) 60 CLR 431; [1938] HCA 45, followed
R v Ali [\[2008\] QCA 39](#), followed

COUNSEL: The applicant appeared on his own behalf
TA Fuller SC for the respondent

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

MULLINS J: The applicant, Mr Falzon, was convicted on 16 March 2009 after trial before a jury of one count of trafficking in dangerous drugs, one count of production of methylamphetamine with a circumstance of aggravation and one count of production of methylamphetamine.

His appeal against conviction was heard by this Court and dismissed on the merits on 18 December 2009: *R v Falzon* [2009] QCA 393. A summary of the evidence at the trial is found in those reasons.

On 9 January 2012 the applicant filed an application for extension of time within which to appeal against conviction and an application for leave to appeal against conviction. The grounds for seeking the extension are that the applicant seeks to adduce evidence that was not adduced at the trial, which the applicant claims will challenge the evidence of the two main prosecution witnesses who were indemnified witnesses.

The applicant also seeks to adduce evidence from an expert accountant who had prepared a forensic accounting report for the purpose of the trial, but was not called on the applicant's behalf at the trial.

Although the applicant now asserts that his counsel, who appeared on his appeal against conviction that was heard in 2009, pursued irrelevant grounds the reasons of the Court of Appeal make it abundantly clear that the applicant's appeal against conviction was disposed of on the merits.

The jurisdiction of the Court to deal with an appeal against conviction is statutory. See section 668D(1) of the *Criminal Code* 1899. It has long been settled that a second appeal

against conviction cannot be entertained after one appeal has been dismissed on the merits: *Grierson v The King* (1938) 60 CLR 431.

That is the position even if the proposed ground of appeal alleges a miscarriage of justice and is based on what is claimed to be new or fresh evidence: *R v Ali* [2008] QCA 39.

There is no point in giving an extension of time to appeal against conviction when the Court of Appeal does not have jurisdiction to hear a second appeal against conviction. The application for extension of time within which to appeal, and the application for leave to appeal against conviction, should be dismissed.

FRASER JA: I agree.

A LYONS J: I agree.

FRASER JA: The orders proposed by Mullins J are the orders of the Court.