

COURT OF APPEAL

**HOLMES JA
FRASER JA
DAUBNEY J**

**CA No 232 of 2013
DC No 1119 of 2009**

THE QUEEN

v

JACOB, Raynard Smith

Applicant

BRISBANE

MONDAY, 2 DECEMBER 2013

JUDGMENT

HOLMES JA: The applicant seeks an extension of time within which to appeal against his conviction and seeks leave to appeal against his sentence on one count of assault with intent to rape and one count of rape. The approach to be taken on such an application, as set out in *R v Tait* [1999] 2 Qd R 667, is to consider whether any good reason has been shown to account for the delay and whether it is in the interests of justice to grant the extension, which may involve assessing whether the appeal is viable.

The applicant was sentenced after pleading guilty on both counts on 8 April 2010 to six and a half years imprisonment on the rape and four years on the assault with 372 days in pre-sentence custody declared and with a parole eligibility date set after two and a half years imprisonment.

So far as the application concerns the applicant's conviction, any appeal would require the setting aside of his guilty pleas. In his outline, the applicant asserts that his conviction was obtained through a "plea bargain". He says that he was told by his solicitor to plead guilty to one charge, which would result in his release after 12 months, and he says here that he did not plead guilty to rape but simply to the charge of assault. He says that occurred in the context of his grabbing his belongings and punching the complainant, but says that he did not rape her.

A friend who has reviewed the material has advised him that none of his DNA was found on the victim, which the applicant says in his outline means that there was no evidence of sexual contact. In fact, the DNA report provided by the Crown shows that there were spermatozoa found on a swab of the complainant's vagina, but the profile obtained did not have sufficient information to match it to any person. However, it is a safe assumption that there was evidence of sexual contact between the applicant and the complainant in the form of the complainant's own account of the event, and the absence of corroborative DNA evidence by no means shows the contrary. The DNA evidence is neutral; it certainly does not point to the applicant's innocence.

As to the manner of the plea, an extract from the transcript of the sentencing proceeding shows that on arraignment, the applicant pleaded guilty to both counts, and when asked whether he had anything to say as to why a sentence should not be passed on him, answered no. If indeed the applicant pleaded guilty in the hope of obtaining a more lenient sentence, although entertaining a belief in his own innocence, it does not follow that any miscarriage of justice has occurred: *Meissner v The Queen* (1995) 184 CLR 132 at 141.

The applicant is, in fact, serving a six and a half year sentence. It appears that he has simply failed to understand that the sentences imposed were concurrent. He has offered no submissions as to why a sentence of six and a half years was not a proper one for the offences, and on the limited material available, it would seem unremarkable.

The applicant provides no explanation for the delay in his application beyond the assertion that he has a low level of education, has difficulties with the English language and does not understand legal matters. That would not account for why, if he genuinely believes he was wrongly convicted, or indeed was convicted of a charge to which he did not enter a plea, he would not have raised that in the last three and a half years, particularly since it seems that he has been able to lodge parole applications.

It is doubtful that what he has put could explain the three and a half year delay in the application, but in any event, nothing has been shown which suggests any prospect of success in either an application for leave to appeal against sentence or an appeal.

I would dismiss the application for an extension of time.

FRASER JA: I agree.

DAUBNEY J: I also agree.

HOLMES JA: The application for an extension of time is dismissed.