[2013] QCA 359

COURT OF APPEAL

HOLMES JA
MORRISON JA
DAUBNEY J

CA No 228 of 2013
DC No 173 of 2008

THE QUEEN

v

WOODMAN, Daniel Tommy **Applicant**

BRISBANE

TUESDAY, 3 DECEMBER 2013

JUDGMENT

DAUBNEY J: On 8 December 2008, the applicant was convicted, on his own plea of guilty, to one count of having committed grievous bodily harm with intent on 8 April 2008. The complainant was the applicant's partner. He was sentenced to 11 years' imprisonment. This offence was committed during the operational period of a partially suspended sentence of two and a half years' imprisonment, 16 months of which remained unserved. He was ordered to serve that 16 month period of imprisonment concurrently with the 11 year sentence. The applicant also pleaded guilty to breaching a domestic violence order on 11 November 2007, for which he was sentenced to 134 days concurrent imprisonment.

On the 15th of January 2009, the applicant filed an appeal against conviction and an application for leave to appeal against sentence. When those matters came before the Court

of Appeal on 3 June 2009, the appeal against conviction was not formally abandoned, but the applicant's counsel had informed the respondent's counsel that the applicant was only pursuing the application for leave to appeal against sentence. On 17 July 2009, the Court of Appeal formally dismissed the appeal against conviction and refused the applicant's application for leave to appeal against sentence – see *R v Woodman* [2009] QCA 197. On 3 March 2010, the applicant filed a further application for leave to appeal against sentence and sought an extension of the time to make the application.

That application was refused – see *R v Woodman* [2010] QCA 162. The grounds for seeking to appeal against sentence were that:

- the sentence was manifestly excessive, the applicant's cooperation with the authorities was not recognised;
- the applicant's early plea was not recognised;
- his remorse was not recognised;
- the sentencing judge did not have regard to s 23 of the *Criminal Code* because the applicant was drinking heavily and there was never any intent "only accident";
- the applicant's prospects of rehabilitation were not considered; and
- the applicant's youth was not considered.

The applicant's application for leave to appeal against sentence was clearly out of time. White JA, with whom McMurdo P and Fraser JA agreed, refused the applicant's application for an extension of time, saying (omitting citations):

> "[20] The overriding principle must be whether the court considers that it is in the interests of justice to grant the extension of time. As is clear here, this Court has already considered the grounds of appeal now advanced by the applicant. Nothing fresh has been raised and the application for leave to appeal the sentence and the merits of any appeal have been fully considered."

The applicant has now filed another application, by which he seemed to be seeking leave to appeal against sentence. I say "seemed" because the confused and confusing submissions made by the applicant refer both to matters going to sentence and also to factual matters underpinning his conviction (remembering, again, that he had pleaded guilty to this charge). In a commentary at the end of his "grounds of appeal", however, the applicant said:

> "Although I totally except (sic) blame for my unacceptable behaviour during the period these offences occurred, I am not asking this Court to overturn my Conviction all I'm asking for is this Court look at the merits of my case and look at the time I have done and my good institutional behaviour and work reports after being in Prison for many years now." The applicant confirmed in oral submissions today that he did not seek to appeal against conviction. The applicant has also applied for the necessary extension of time.
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> An overview of the particularly serious nature of the crime committed by the applicant was given by McMurdo P when considering the applicant's application for leave to appeal against sentence in 2009:
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> > "[26] The maximum term of imprisonment for the offence of doing grievous bodily harm with intent is life imprisonment. This is a most serious example of that offence. The victim's injuries required this Court to sentence Woodman by having primary regard to the matters set out in s 9(4) of the *Penalties and Sentences Act*. Woodman formed an intention, albeit a drunken intention after consuming methylated spirits and without extensive premeditation, to do grievous bodily harm to his literally long-suffering partner, the mother of his children, whom he knew was pregnant with his child. He carried out that intention in a dreadful way. He poured methylated spirits over her head, face and upper body and set fire to her. She suffered

> shocking burns, excruciating pain, a lengthy period of hospitalisation and rehabilitation, permanent scarring and extensive physical and psychological injuries. He was frightened by what he had done and especially about the consequences of it for him. He expressed some remorse, but not enough to surrender himself to the authorities. He fled to the Northern Territory and was not apprehended for about three months. To his credit, he did plead guilty at an early stage and the victim was not required to give evidence, even at committal. He has a shameful criminal history for offences of violence, including against the present victim."

The President referred to the fact that the applicant's only mitigating features were his early plea of guilty, his relative youth and efforts at rehabilitation while in presentence custody, and that his actions were committed without much premeditation and with a drunken intent. Her Honour then referred to the sort of sentence which could have been expected if the matter had proceeded to trial and also the matters necessary to be taken into account under s 9(4) of the *Penalties and Sentences Act*. The President concluded, at paragraph [27]:

> "The 11 year head sentence adequately balances the various mitigating and exacerbating features of this case. It recognises Woodman's early plea of guilty, the conduct of his case by way of a full hand-up committal, his drunken intent, limited premeditation, relative youth and rehabilitative prospects. The judge placed appropriate weight on Woodman's past record (s 9(4)(g)) and his antecedents (s 9(4)(h)). The sentence imposed was within the appropriate range and the applicant has not demonstrated that the sentencing miscarried any way."

In short, in 2009 an application by this applicant for leave to appeal against sentence was considered by this Court on its merits, and was refused.

The present application for leave to appeal against sentence is also clearly out of time. The applicant's material contains nothing to justify the grant of an extension of time, beyond a broad assertion that he is a prisoner with limited computer access and has been moved from one prison to another.

Even more fundamentally, however, since this applicant's 2010 application was heard and determined, this Court has clarified the application of the general rule in *Grierson v The King* (1938) 60 CLR 431 to applications for leave to appeal against sentence when an earlier application for leave to appeal against sentence has been refused upon the merits of the proposed appeal. In *R v Upson (No 2)* [2013] QCA 149, Fraser JA, with whom Holmes JA and I agreed, said:

> "In the case of an application for leave to appeal against sentence where a previous application was refused on the merits of the proposed appeal, the mere repetition or refinement of the original grounds of appeal, the formulation of different grounds, or reliance upon new evidence, does not take the case outside the general rule that the Court lacks jurisdiction to hear the second application. That is what the applicant sought to do in this case. Accordingly, the Court lacked jurisdiction to hear the applicant's proposed application for leave to appeal against sentence. That being so, the application for an extension of time to bring the application for leave to appeal against sentence should be refused on the ground that it is futile."

Those are precisely the considerations which apply to the present case. A previous application for leave to appeal against sentence by this applicant has been heard and determined on its merits by this Court. The Court now has no jurisdiction to hear a further application for leave to appeal against sentence by this applicant. That necessarily renders the application for an extension of time to bring the application for leave to appeal against sentence futile.

The application should be refused.

HOLMES JA: I agree.

MORRISON JA: I agree.

HOLMES JA: The application for an extension of time within which to seek leave to appeal against sentence is refused.