

**COURT OF APPEAL**

**FRASER JA  
PHILIPPIDES JA McMURDO  
JA**

**CA No 148 of 2018  
DC No 48 of 2016**

**THE QUEEN**

**v**

**BDG**

**Applicant**

**BRISBANE**

**THURSDAY, 21 FEBRUARY 2019**

**JUDGMENT**

**PHILIPPIDES JA:** On 14 September 2016, after a trial by jury, the applicant was convicted of offences committed against his daughter relating to events dating back to the 1970s, for which he was sentenced to concurrent terms of imprisonment as follows:

- three years imprisonment on each of four counts of indecent treatment of a child under 17, under 12, domestic violence offence, being counts 1, 2, 3 and 5;
- nine years imprisonment on each of six counts of rape, domestic violence offence, being counts 4, 7, 8, 9, 12 and 14;

- six years imprisonment on one count of attempted rape, domestic violence offence, being count 6;
- 12 months imprisonment on one count of assault occasioning bodily harm whilst armed, domestic violence offence, being count 10;
- two years imprisonment on two counts of indecent treatment of a child under 16, under 12, domestic violence offence, being counts 11 and 13; and
- 12 months imprisonment on one count of indecent treatment of a child under 16, domestic violence offence, being count 15.

The applicant seeks extensions of time in which to appeal his convictions and sentences. The applicant supports the application by letter to the Court dated 17 January 2019. It annexes a letter of unspecified date written in the Brisbane Correctional Centre, together with a letter dated 26 November 2018 and a copy of a statement by the complainant.

As was explained in *R v Tait*,<sup>1</sup> where an application to extend time to appeal a conviction or sentence is made, it is necessary to examine whether there is any good reason to account for the delay and consider, overall, whether it is in the interests of justice to grant the extension, which may involve an assessment of whether the appeal seems to be a viable one. Where feasible, it is appropriate to make some provisional assessment of the strength of the applicant's case and take into account, in doing so, whether the case is a fit one for granting the extension. A relevant factor will be the length of the delay, it being much easier to excuse a short delay than a longer one.

The application, which was signed by the applicant on 17 May 2018, was filed on 15 June 2018, approximately 18 months out of time. The application for extension raises the following reasons for the delay. The applicant could not read the paperwork provided to him in jail by his solicitor after he was sentenced because of his poor eyesight, for which he requires special prescription reading glasses. He was scared to ask for assistance in reading the paperwork due

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<sup>1</sup> [1999] 2 Qd R 667 at [5].

to the nature of the offences and his fearing for his life. In addition, during his first month in jail, he suffered serious depression and a breakdown, which resulted in him being transferred to the PA Hospital for several days. After his return to prison, he was “unable to think purposefully about anything”, including whether he could appeal.

After about six months in jail, around March 2017, he received suitable glasses and it was then that he became aware of the content of his solicitor’s letter, which informed him of the time period of one month from the date of conviction in which to lodge an appeal. He then assumed that he was unable to appeal. However, on 14 November 2017, when speaking to a lawyer from Legal Aid, he was told that he could seek an extension of time in which he could appeal. Subsequently, the lawyer from Legal Aid provided the applicant with the necessary forms, which he said he completed in late 2017 and gave to a corrections officer who he understood would send them on to the registry.

As he heard nothing back from the Court in mid-April 2018, the applicant contacted Sentence Management. He was told that no forms had been received. The applicant then contacted Legal Aid on 26 April 2018 and was sent another copy of the forms.

As the respondent observed, none of these contentions are supported by affidavits from the applicant or anyone else.

The applicant stated that at the time of signing the application on 17 May 2018, he had not applied for Legal Aid but intended to do so. However, in his letter dated 17 January 2019, the applicant stated he is still waiting on a reply regarding legal representation.

The applicant stated in the undated letter written in Brisbane Correctional Centre that it was after the six month wait to receive the prescription glasses, which allowed him to read his “appeal papers”, that he realised that while at the correctional centre, and without suitable glasses, he had signed something he should not have. He stated that he signed the document in the full belief that “it was to get him out”.

In his letter dated 17 January 2019, the applicant submitted that the complainant did not make the complaints about the applicant while her mother (the applicant's wife) was alive. The applicant also referred to the annexed statement by the complainant, where the complainant stated that her mother had told her that the applicant committed sexual offences against her younger brother. The applicant described that as "outrageous" and maintained that the complainant's mother would not have made those statements.

The applicant also stated that his son visited his residence in 2012 and 2014 "to gather information on how much [the residence] was worth" and that he should be cross examined. He also claimed that his brother ought to be made available for cross examination.

He also claims that the complainant perjured herself in giving evidence at the trial. In his outline, he says that there was "no justifiable or substantial evidence, only fabricated, rotten stuff that was not queried". In those circumstances, the applicant contends that a miscarriage of justice occurred. He does so in the context of stating that "key concepts to evidence have been grossly manipulated and crucial evidence has been overlooked".

It is to be observed that also in the letter dated 26 November 2018, the applicant stated that the complainant's lawyer has sent an "endless flow of relentless documents" to the applicant and had threatened legal litigation against the applicant's assets. He stated that he "will put the matter on hold" while he waits for legal representatives so that they can run his criminal appeal.

As to the sentences imposed, the applicant maintains that the sentence was "harsh and inappropriate" and that the applicant will defend his innocence.

The respondent submitted that the applicant had not provided a satisfactory explanation for the delay in bringing the application and that, on the face of it, his concerns were about being sued civilly, apparently arising from his convictions and that that appeared to be the motivation for the belated appeal. It was contended that there was no viable appeal, in any event.

In the circumstances of this case, I do not consider that the applicant has provided any adequate explanation for the delay that has occurred. The explanation is unsupported by evidence. The

delay in bringing the application for an extension of time was considerable. Even allowing for the applicant's health problems in the month or so after his conviction, he failed to act promptly after, as he accepts, he did learn that he could lodge an extension of time application. The applicant also delayed pursuing the lack of response after he initially filed his application.

Putting the matter of delay to the side, it is also apparent that the applicant has not demonstrated that there is a viable appeal against his convictions.

The applicant asserted that he wanted his youngest son to be cross examined. It is not clear on what basis. The applicant also contended, as I mentioned, that the complainant had perjured herself. He also contends that his brother ought to have been called to give evidence and wishes to do so. Nothing, however, is put forward to support there being any basis for a viable appeal to have any grounds of success in this matter.

It appears, from the summing up by the trial judge that has been made available, that the trial judge gave adequate directions that were unremarkable and appropriate to the case. The summing up adequately dealt with the evidence that was given by the complainant and the two preliminary complaint witnesses. The applicant did not call or give evidence.

As for the applicant's contention that his sentence was manifestly excessive, it is to be observed that the offences were serious ones and it is not apparent that the sentencing remarks proceeded on the basis of any error of principle, nor that the sentences imposed themselves were outside the appropriate range in relation to the offences in question.

Accordingly, the applicant has not demonstrated that his complaint as to conviction and his complaint as to sentence would enjoy any prospects of success, leaving aside the lack of any adequate explanation for the delay.

I would dismiss the application.

**FRASER JA:** I agree.

**McMURDO JA:** I agree.

**FRASER JA:** The application is dismissed.