

# SUPREME COURT OF QUEENSLAND

CITATION: *R v McClure* [2020] QCA 45

PARTIES: **R**  
**v**  
**McCLURE, Samuel David**  
(applicant)

FILE NO/S: CA No 254 of 2019  
DC No 2279 of 2018

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time

ORIGINATING COURT: District Court at Brisbane –Date of Conviction: 13 February 2019 (Shanahan DCJ)

DELIVERED EX TEMPORE ON: 16 March 2020

DELIVERED AT: Brisbane

HEARING DATE: 16 March 2020

JUDGES: Sofronoff P, Philippides and Mullins JJA

ORDER: **Application for extension is refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where the applicant seeks extension of time to appeal conviction – where application filed more than six months late – where the applicant pleaded guilty to one count of attempted armed robbery after receiving legal advice – where applicant submits he was too drug affected at the time of the offence to form intent to steal – where applicant does not provide any detail as to the likely content of evidence regarding his mental state at the time of the offence – whether application for extension of time should be allowed

*R v Tait* [1999] 2 Qd R 667; [\[1998\] QCA 304](#), considered

COUNSEL: The applicant appeared on his own behalf  
D Balic for the respondent

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

**MULLINS JA:** On 13 February 2019, Mr McClure pleaded guilty in the District Court to one count of attempted armed robbery. The date of the offence was 14 April 2018. He was sentenced to imprisonment for three years and given a fixed parole release date of 13 April 2019. A pre-sentence custody declaration was made in respect of the period of 215 days that he had spent in custody and that could be declared as time already served under the sentence. He applies for an extension of time in which to apply for leave to appeal against the sentence by application filed on 25 September 2019. At the same time, Mr McClure filed the application for leave to appeal against sentence.

His extension application was therefore filed more than six months after an appeal should have been filed. Mr McClure appears for himself on this application. Mr McClure was 37 years old when he was sentenced. He was represented by a firm of solicitors who instructed counsel to appear on his behalf. He pleaded guilty on the day his trial on the charge was due to start. He signed written instructions to his solicitors on the previous day that confirmed he wished to plead guilty to the offence and acknowledged that he had read the charge and the prosecution's schedule of facts and that he did not wish to contest the facts.

The grounds on which Mr McClure applies for the extension and the application for leave to appeal against the sentence relate to his conviction rather than his sentence. The respondent's submissions have therefore focused on why the extension of time should not be given for Mr McClure to appeal against his conviction. Mr McClure confirmed on the hearing of this application that his complaint was about the fact that he was persuaded by his lawyers to enter a plea of guilty when he wished to proceed to trial on the charge. Mr McClure now wishes to assert that he did not have the intent required for the charge by relying on section 28, subsection (3) of the *Criminal Code* on the basis he was suffering from a drug induced psychosis.

The facts of the offence were summarised by the learned sentencing judge:

“You entered into the service station apparently trying to find some material to repair your bicycle. Your instructions are you were affected by drugs at the time and when one considers your criminal history, it has

got the flavour of drug addiction to it. At some stage, you approached the complainant and asked for money, and he was the shop attendant and he refused and you produced a screwdriver and threatened him with it, and you threatened to stab him in the face with it. He continued to refuse to comply and told you he was calling the police. You left. You were hanging around outside the garage for a while. The police were called. The offence was caught on closed-circuit television. There were no attempts to disguise yourself. It was plainly unplanned and spontaneous, although it involved the production of a weapon and a threat to a man who was simply following his own employment.”

On an application for extension of time, the court considers whether there is any good reason shown to account for the delay and whether it is in the interests of justice to grant the extension which may involve some assessment of whether the appeal seems to be a viable one. *R v Tait* [1999] 2 Qd R 667 at 668.

The applicant has not sworn an affidavit in support of his application, but has prepared written submissions in which he stated he was not aware that he had to appeal within 28 days, and that after being sentenced he spent several months doing his own research in preparing the defence for his case. That is not a good reason for the delay. Although he was sentenced on the basis of being drug affected at the time he committed the offence, in order to pursue a proposed defence of being so intoxicated that he was incapable of forming the intent to steal from the complainant, Mr McClure would require medical evidence to support his claim. In his submissions, Mr McClure refers to the ongoing assessments regarding his mental health by Mental Health Queensland, an assessment conducted by psychologist Mr Stoker, and eyewitness testimonies, but does not give any detail as to the likely content of the evidence relating to his mental state at the time of the offence and whether that would have affected his capacity to form the intent to steal from the service station employee. The respondent relies on the affidavit obtained from the solicitor who acted for Mr McClure on his sentence. The solicitor notes that Mr McClure made full admissions to him that he had demanded money at the service station, using a screwdriver to achieve his objective and that he had voluntarily taken methamphetamine prior to committing the offence.

The solicitor advised Mr McClure that there was an overwhelming Crown case and that he may very well be convicted after trial, and that he would have advised Mr McClure that his

voluntary intoxication would not be likely to amount to a successful defence in the circumstances.

If the application is treated as an application for extension in which to apply for leave to appeal against sentence, it must fail as Mr McClure has made no submissions relevant to the sentence that was imposed.

If the application for extension is treated as an application for extension in which to appeal against a conviction, Mr McClure has the difficulty that he pleaded guilty to the charge after legal advice, and that he has not put before the court the evidence relevant to show that he did have an arguable defence to the charge. It is therefore not in the interests of justice to grant the extension. The application for extension must be refused.

**SOFRONOFF P:** I agree.

**PHILIPPIDES JA:** I also agree.

**SOFRONOFF P:** The application is refused.