

DISTRICT COURT OF QUEENSLAND

CITATION: *CFK v The Queen* [2020] QDC 92

PARTIES: **CFK**
(Applicant)
v
THE QUEEN
(Respondent)

FILE NO/S: 165/19

DIVISION: Criminal

PROCEEDING: Pre-trial hearing: application for a no-jury trial

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 16 April 2020 (*ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 16 April 2020

JUDGE: Farr SC DCJ

ORDER: **Application granted.**

CATCHWORDS: CRIMINAL LAW – PRE-TRIAL HEARING – Application for a no-jury trial – *Criminal Code Act 1899* (Qld) ss 614, 615 – where the application is opposed – where the applicant is charged with three counts of indecent treatment of a child under 16, under 12 – where the matter previously resulted in a hung jury – where a trial is listed for 20 July 2020 – where the matter would not involve the court applying or determining community standards – where an unknown delay currently exists due to the COVID-19 pandemic restrictions – whether it is in the interests of justice for the trial to proceed on a judge alone basis – where delay, in itself, may not be sufficient – where the individual circumstances of every matter must be assessed.

COUNSEL: A S McDougall for the applicant
D M White for the respondent

SOLICITORS: TWC Lawyers for the applicant
Director of Public Prosecutions (Qld) for the respondent

- [1] HIS HONOUR: Yes. Thank you. All right. This is an application for a judge-only trial pursuant to the provisions of sections 614 and 615 of the Criminal Code. The application is opposed. The applicant is charged with three counts of indecent treatment of a child under 16 under 12. The matter has already gone to trial on one prior occasion – that was before a jury – which resulted, ultimately, in a hung jury. That was a trial that was conducted in mid-September last year.
- [2] The matter currently has a trial listing for the 20th of July this year. Counsel for the applicant has conceded that the behaviour the subject of each of the three charges, if proved to the requisite standard, constitutes indecent behaviour and that there would be no submission to the contrary, so it is not a matter that involves the court applying or determining community standards. The thrust of the application is to the effect that it is in the interest of justice that a – the trial be – proceed before judge alone due to the unknown delay that would currently – or that currently exists in relation to jury trials being held as a consequence of the current COVID-19 pandemic restrictions.
- [3] It is correct to say that, at the moment, there is no knowledge by anybody as to when jury trials may be restarted, whether it be this year or next year or beyond that. Counsel has submitted on behalf of the applicant that it is not only the fact of there being a delay that is of relevance to the application, but there is also the consideration that, at the moment, that length of delay is unknown.
- [4] “Interests of justice” is a term that is broad and wide-ranging, as has been recognised by a number of courts in a variety of cases over the years. It is correct to say that delay in and of itself might not necessarily constitute a foundation for such an argument, but the individual circumstances of every matter, of course, must be assessed in respect of those particular circumstances. Here, the courts are in a never before seen situation of not being able to conduct jury trials and not being able to do so for an unknown period of time, although it would seem that it is going to be for some considerable period of time into the future from now.
- [5] The Crown has opposed the application for trial by judge alone on the basis that the delay itself is unknown, that the delay does not enliven the term “in the interests of justice” and that, given the nature of the charges, there is the prospect of the application of community standards in the determination of guilty or otherwise.
- [6] This issue has been brought before a number of other courts in recent weeks, the result of which has varied, but on a number of occasions, a judge-alone trial has been ordered on the basis of that which is put forward in this matter today. Some of those applications were opposed and some were unopposed. I won’t, for the purposes of this ex tempore decision, repeat the provisions of section 614 and section 615. I should note, of course, that at the moment, the identity of the trial judge is unknown, which is a relevant consideration. And I accept, given the concession that’s been made by counsel from the bar table, that this is a matter that does not involve the application of objective community standards in the determination of outcome.
- [7] Given the unknown length of delay that applies at present, in my view, the interests of justice would be served by this matter being able to proceed to trial on a judge-alone basis. Justice must be, of course, administered publicly when that is appropriate, and

it is almost trite to say that justice should be delivered as speedily as can appropriately be managed.

[8] Taking all those matters into account, including the submissions of counsel, I'm of the view that this is a matter that can and should, for those reasons, proceed to trial on the listed date before a judge alone, and I will so order. Anything else, gentlemen?

[9] MR WHITE: No, your Honour.

[10] MR McDOUGALL: No, your Honour. Not from me.