

# SUPREME COURT OF QUEENSLAND

CITATION: *R v CCB* [2018] QCA 145

PARTIES: **R**  
**v**  
**CCB**  
(applicant)

FILE NO/S: CA No 208 of 2017  
DC No 382 of 2013

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence & Conviction)

ORIGINATING COURT: District Court at Beenleigh – Date of Conviction: 2 March 2015; Date of Sentence: 6 May 2015 (Dearden DCJ)

DELIVERED ON: 29 June 2018

DELIVERED AT: Brisbane

HEARING DATE: 7 March 2018

JUDGES: Sofronoff P and McMurdo JA and Boddice J

ORDER: **Application refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – GENERAL PRINCIPLES – PROCEDURE – TIME FOR APPEAL – EXTENSION OF TIME – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where the applicant pleaded guilty to one count of rape – where the applicant was sentenced to seven years imprisonment – where the applicant filed an application for an extension of time within which to appeal his conviction and to apply for leave to appeal against his sentence – where the application for extension of time was filed on 8 September 2017, more than two years out of time – where the applicant proffered his imprisonment and health problems as reasons explaining the delay – where the applicant put forward affidavits signed by witnesses to whom, it is said, the complainant admitted her perjury – whether anything has been shown to demonstrate an arguable case to set aside the applicant’s plea of guilty

COUNSEL: The applicant appeared on his own behalf  
C Wallis for the respondent

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

- [1] **SOFRONOFF P:** Almost two years ago, on 2 March 2015, the applicant pleaded guilty to one count of rape. He was sentenced on 6 May 2015 to seven years imprisonment with a parole eligibility set at 5 July 2017. He now applies for an extension of time within which to appeal against his conviction and, it seems, an extension of time within which to apply for leave to appeal against his sentence. The application for extension of time was filed on 8 September 2017.
- [2] The applicant faces formidable obstacles. He must persuade the Court to exercise its discretion to extend time within which to appeal. This requires him to do two things. He must explain his delay satisfactorily and he must also show that it would be in the interests of justice overall to grant an extension of time. One factor relevant to this second matter is whether an appeal would have any prospects of success.
- [3] As to delay, in his application for extension of time the applicant says the grounds of his application are that he was unable to commence proceedings because one Ms O'Brien was unavailable until September 2016. In his outline of submissions, but not on oath, the applicant has said that there are disadvantages facing a prisoner who wishes to collect evidence by reason of the absence of professional assistance and the delays caused by incarceration itself. In addition, about two months after he was sentenced, the applicant submits that he underwent open heart surgery and was then assaulted a few days later. He says that he continues to require medical treatment.
- [4] The applicant has put forward affidavits signed by proposed witnesses in front of whom, it is said, the complainant admitted her perjury. These affidavits were made on various dates between 29 November 2016 and 12 June 2017. Ms O'Brien is not among the deponents.
- [5] It can be accepted that imprisonment makes it very difficult to prosecute court proceedings and due allowance must always be made for that fact when considering the significance of delay. The applicant's health and the difficulty caused by imprisonment do not explain the lengthy delay here. The delay between September 2016 and the date of filing of the application for extension of time has also not been explained. In addition, the delay between the provision of those affidavits bearing their respective dates and the filing of the application is not explained.
- [6] Additionally, nothing has been shown to demonstrate an arguable case to set aside the plea of guilty made by the applicant. He was arraigned on 2 March 2015 and pleaded guilty. He was represented by counsel. Two whole months later he appeared, on 6 May 2015, for sentence and Dearden DCJ sentenced him. On this occasion, he was represented by a different (and very experienced) criminal counsel, Mr Bagley.
- [7] The applicant now says that he pleaded guilty because he was told by his original barrister that he would receive a lesser sentence if he pleaded guilty. This was a true statement, if it was made, and it can be dismissed as irrelevant to this application.
- [8] The applicant also says he tried to put forward a recording and that his lawyers failed to put it forward. The recording to which he referred then, and upon which he relies now, is a recording of several telephone conversations he had from prison with Ms O'Brien. According to the applicant this woman had informed him that

she had heard the complainant recant her complaint and that she, O'Brien, had recorded this reversal on her own telephone. The appellant would have liked to obtain the recordings of his conversations with O'Brien made by prison authorities. He says he tried to get them but has been unsuccessful and now O'Brien has ceased contact with him.

- [9] None of this adds up to any reason to think that the applicant's plea of guilty would be set aside. To set aside a plea of guilty an applicant must show something in the nature of a failure to appreciate the significance of the plea, or an absence of evidence capable of supporting a conviction, or that the plea had been induced by fraud, threats or some kind of impropriety. It has often been said that there is a public interest in the finality of litigation and this applies as much to criminal as to civil proceedings. That is why a plea of guilty by a person who is competent and has the opportunity to consider all the facts is taken to be an admission of all of the elements of the offence charged.
- [10] The applicant's contention that recordings of conversations between himself and a person who gave him some hearsay about something that the complainant had said is not a basis for an arguable application to set aside a guilty plea made on legal advice and which was maintained for the two months that elapsed between the plea and sentence and for the two years since then.
- [11] None of the other affidavits relied upon are capable of changing this conclusion. None of them has been shown to have been unavailable at the time of the plea and, in any case, none of them raise any doubt about the justification for the guilty plea.
- [12] For these reasons I would refuse this application.
- [13] **McMURDO JA:** I agree with Sofronoff P.
- [14] **BODDICE J:** I agree with Sofronoff P.