

SUPREME COURT OF QUEENSLAND

CITATION: *R v Wardle* [2011] QCA 156

PARTIES: **R**
v
WARDLE, Colin Edward
(applicant)

FILE NO/S: CA No 28 of 2011
DC No 1893 of 2010

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 13 July 2011

DELIVERED AT: Brisbane

HEARING DATE: 13 July 2011

JUDGES: Muir and Fraser JJA and PD McMurdo J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **The time for appealing against the applicant's conviction be extended to 3 March 2011.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where the applicant was found guilty by a jury of one count of grievous bodily harm on 2 February 2011 – where an appeal against conviction was filed one day out of time – where the delay was explained by an oversight on behalf of the applicant's solicitors – where the applicant seeks an extension of time to appeal against conviction – whether the application for an extension of time should be granted

COUNSEL: P E Smith, with K M Hillard, for the applicant
D C Boyle for the respondent

SOLICITORS: Jones & Company Solicitors for the applicant
Director of Public Prosecutions (Queensland) for the respondent

McMURDO J: The applicant seeks an extension of time to appeal against his conviction of an offence of doing grievous bodily harm. After a three day trial in the

District Court, he was convicted on 2 February 2011. On the following day, he was sentenced to a term of 12 months imprisonment, wholly suspended with an operational period of 12 months.

An appeal against conviction was filed on 3 March 2011, one day out of time. The explanation comes from an affidavit from the applicant's solicitor, who concedes that its lateness was by an oversight within his firm. It is likely that the view was taken by the solicitors that time ran from the date of the sentence and not from the date of the conviction. Therefore the applicant has satisfactorily explained the delay.

The Crown opposes an extension of time on the basis that the proposed appeal has no prospect of success. The grounds which the applicant wishes to argue are that the verdict was unreasonable and that the trial judge misdirected the jury in several respects. Those grounds have been addressed at some length in the applicant's outline of argument. In response, the Crown submits that none of them can succeed.

The difficulty in assessing those arguments, at least upon the ground of an unreasonable verdict, is that this Court does not have a record of the trial. It has the judge's summing up and parts of the transcript dealing with requests for redirections as well as the sentencing remarks. It does not have a record of the evidence. The written submissions for the applicant, particularly on the unreasonable verdict ground, cannot be said to be, on their face, hopeless. At present then, no view could be fairly reached as to the applicant's prospects.

In the circumstances where the required extension is but one day and the need for it is satisfactorily explained, I would now order that the time for appealing against the applicant's conviction be extended to 3 March 2011.

MUIR JA: I agree.

FRASER JA: I agree.

MUIR JA: The order of the Court will be as intimated by Justice McMurdo.