

SUPREME COURT OF QUEENSLAND

CITATION: *R v Phillips* [2017] QCA 88

PARTIES: **R**
v
PHILLIPS, Douglas Allan
(applicant)

FILE NO/S: CA No 287 of 2016
SC No 259 of 2016

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Conviction)

ORIGINATING COURT: Supreme Court at Brisbane – Date of Conviction:
12 September 2016

DELIVERED ON: 12 May 2017

DELIVERED AT: Brisbane

HEARING DATE: 6 March 2017

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

ORDER: **The application for an extension of time within which to appeal the conviction be granted.**

CATCHWORDS: APPEAL AND NEW TRIAL – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN GRANTED – where on the 12 September 2016 the applicant and his three co-offenders were found not guilty of murder but guilty of manslaughter – where the applicant was convicted and sentenced to 12 years and six months imprisonment – where the sentence necessitated the declaration of a serious violent offence – where the applicant ultimately wishes to appeal against conviction – where the Crown opposes an extension of time within which to appeal on the basis that such an appeal does not have any prospects of success – where it is necessary for the applicant to show good reason for the delay in filing the Notice of Appeal and that it is in the interests of justice to grant the appeal – where the applicant did not have access to legal representation during the period when a Notice of Appeal should have been lodged – where it is necessary to undertake a provisional assessment of the strength of the applicant’s case in determining whether a granting of an extension of time would be in the interests of justice – where the Court does not have access to the evidence led at trial – where the applicant is

facing a very substantial period of imprisonment – whether it is in the interests of justice to grant the extension sought

Criminal Code (Qld), s 7, s 8

R v Amundsen [2016] QCA 177, applied

R v SCH [2015] QCA 38, applied

R v Tait [1999] 2 Qd R 667; [1998] QCA 304, applied

COUNSEL: The applicant appeared on his own behalf
V A Loury QC for the respondent

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

- [1] **PHILIPPIDES JA:** I agree for the reasons given by Boddice J that the application for an extension of time within which to appeal against the applicant’s conviction should be granted.
- [2] **McMURDO JA:** I agree with Boddice J.
- [3] **BODDICE J:** On 12 September 2016, a jury found the applicant and his three co-accused not guilty of murder but guilty of manslaughter. The applicant was sentenced to 12 years and six months imprisonment with the consequence there was an automatic declaration of a serious violent offence.
- [4] By application filed 19 October 2016, the applicant sought an extension of time within which to appeal his conviction and also to bring an application for leave to appeal against sentence. Those applications were heard on 6 March 2017. The applicant represented himself at that hearing.
- [5] At the hearing, the applicant’s application for an extension of time within which to appeal against sentence was not opposed by the Crown. The extension was granted and the application for leave to appeal against sentence adjourned to a date to be fixed.
- [6] The application for an extension of time within which to appeal against conviction was opposed by the Crown on the basis that any appeal against conviction did not have any prospects of success. The applicant’s sole proposed ground of appeal against conviction that the verdict of the jury was unreasonable or cannot be supported having regard to the evidence, contains no particularisation of the basis upon which it was asserted the verdict was unreasonable or against the weight of the evidence.

Background

- [7] On Christmas Day 2012, the deceased, Robert Jordan, was at his residence with other members of his family. Whilst there, he was approached by the applicant and the applicant’s brother. They asked the deceased to come outside. The deceased did so and was confronted by two further males in the driveway of his home.
- [8] Whilst on the driveway, the deceased was viciously assaulted by the four males. He was knocked to the ground and punched and kicked repeatedly. One or more of the males stomped on the deceased repeatedly. Ultimately, the attack ceased and the four males decamped from the scene.

- [9] The deceased was rendered assistance but died of the injuries sustained in the attack. Those injuries were substantial, including multiple injuries to the head, neck and upper body.
- [10] On 27 March 2015, an indictment was presented in this Court charging the applicant and three co-offenders with the murder of the deceased. Their trial proceeded before a jury, commencing on 18 April 2016. Each pleaded not guilty to the murder of the deceased. After a trial lasting 11 days, the jury found each defendant not guilty of murder but guilty of manslaughter.

Trial

- [11] The Crown case at trial was that the deceased was sought out by the applicant and his co-offenders in a revenge attack. The basis for the charge of murder was that each had attended the deceased's residence with the intention of assaulting the deceased. Two bases for murder were relied upon by the Crown. First, s 7 of the *Criminal Code*. The Crown contended that each offender aided or encouraged the other in the intentional assault of the deceased, knowing there was an intention to at least cause the deceased grievous bodily harm.
- [12] Second, s 8 of the *Criminal Code*. The Crown contended that each offender had attended the deceased's residence with the common purpose of assaulting the deceased and that a probable consequence of that common purpose was that one of the persons assaulting him would do so intending to kill the deceased or at least to do him grievous bodily harm.
- [13] At issue at trial was whether the deceased's death was a foreseeable consequence of the actions of the defendant and his co-offenders, whether the applicant aided or encouraged another who had the requisite intention and whether it was a probable consequence of the unlawful common purpose that the deceased would be assaulted by a person with the requisite intention.

Discussion

- [14] In order to obtain an extension of time within which to appeal the conviction, it is necessary for the applicant to show good reason for the delay in filing a Notice of Appeal within time and that it is in the interests of justice to grant the extension. A consideration of the second aspect may necessitate a provisional assessment of the strength of the proposed appeal, the prejudice to the respondent and the length of the delay.¹
- [15] As to the first requirement, the extension of time sought is short. The explanation for the failure to file the Notice of Appeal within time is that the applicant did not have access to legal representation and was unaware of the limitation period until shortly prior to its expiration. The speed within which the applicant thereafter filed the application for an extension of time within which to appeal is consistent with that explanation. In those circumstances, good reason has been shown for the delay.
- [16] As to the second requirement, any determination of the proposed ground of appeal requires this Court to undertake an independent assessment of the evidence to determine whether it was open to the jury, upon the whole of the evidence, to be satisfied beyond reasonable doubt that the applicant was guilty of manslaughter.²

¹ *R v Amundsen* [2016] QCA 177 at [7]; *R v Tait* [1999] 2 Qd R 667 at [5].

² *R v SCH* [2015] QCA 38 at [7].

- [17] In order to form an assessment of the prospects of success of a ground of appeal based on an unreasonable verdict it would be necessary for the Court to give consideration to the evidence led at trial. The Court does not have access to a transcript of the evidence led at trial. In those circumstances, no assessment may be made, even provisionally, on the strength of the proposed appeal.
- [18] Whilst the Court does not have access to that transcript, the applicant has been convicted of a serious offence after having been acquitted of murder. The consequences of that conviction are dire. The applicant is facing a very substantial period of imprisonment, namely 10 years actual imprisonment before any consideration of release on parole.
- [19] It is in the interests of justice that the applicant be afforded the opportunity to pursue an appeal against such a conviction. The duration sought by way of an extension of time is short. The applicant will otherwise be denied the opportunity to pursue any appeal against his conviction for a very serious offence.
- [20] I would grant the application for leave to extend the time to appeal the conviction.

Orders

- [21] I would order that the application for an extension of time within which to appeal the conviction be granted.