

CITATION: *Woodhill v The Queen* [2022] NTCCA 12

PARTIES: WOODHILL, Jason Bruce

v

THE QUEEN

TITLE OF COURT: COURT OF CRIMINAL APPEAL OF
THE NORTHERN TERRITORY

JURISDICTION: CRIMINAL APPEAL from the
SUPREME COURT exercising
Territory jurisdiction

FILE NO: No. CA 4 of 2022 (21924241)

DELIVERED: 29 June 2022

HEARING DATE: 18 May 2022

JUDGMENT OF: Burns J

REPRESENTATION:

Counsel:

Applicant: S Casey

Respondent V Engel

Solicitors:

Applicant: Townes & Associates Lawyers

Respondent Office of the Director of Public
Prosecutions

Judgment category classification: C

Number of pages: 9

IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Woodhill v The Queen [2022] NTCCA 12
No. CA 4 of 2022 (21924241)

BETWEEN:

JASON BRUCE WOODHILL
Applicant

AND:

THE QUEEN
Respondent

CORAM: Burns J

REASONS FOR JUDGMENT

(Delivered 29 June 2022)

THE COURT:

- [1] On 18 August 2020, the applicant, Jason Woodhill, was found guilty of nine counts of obtaining a benefit by criminal deception contrary to s 227(1)(b) of the *Criminal Code Act 1983* (NT) (*'Criminal Code'*). Each such offence carries a maximum penalty of 7 years' imprisonment. In addition, the applicant pleaded guilty to one count of stealing contrary to s 210 of the *Criminal Code*, also carrying a maximum penalty of seven years' imprisonment.
- [2] On 15 September 2020, the applicant was sentenced to an aggregate term of imprisonment of four years for the offences of

obtaining a benefit by criminal deception. He was also sentenced to 14 months' imprisonment for the offence of stealing, six months of which was to be served cumulatively upon the sentence imposed for the offences of obtaining a benefit by criminal deception. The effect of the sentences imposed was that the applicant was liable to serve terms of imprisonment totalling four years and six months commencing on 18 August 2020. A non-parole period of two years and three months' imprisonment commencing 18 August 2020 was set.

- [3] On 4 April 2022, lawyers on behalf of the applicant filed two applications in this Court. The first is an application for extension of time within which to appeal from the convictions and penalties imposed for these offences. The second application is an application for leave to appeal from the judgment of the primary Judge delivered on 15 September 2020. Originally, the applicant wanted to appeal both the findings of guilt on the charges of obtaining a benefit by deception, and the sentences imposed on all charges. By email dated 9 June 2022, the applicant's lawyers informed the Court that the applicant wished to discontinue his application for leave to appeal against the findings of guilt on the charges of obtaining a benefit by deception. As such, the present applications are limited to the sentences imposed by the primary Judge.

[4] The applicant had a right of appeal against the sentences imposed by the primary Judge by virtue of the provisions of s 51(1) of the *Supreme Court Act 1979* (NT). This right of appeal could have only been exercised with the leave of the Court: s 410(c) of the *Criminal Code*. The applicant was required to give notice of his application for leave to appeal in the prescribed manner within 28 days after the date of sentence: s 417(1) of the *Criminal Code*. The time limit within which such notice of an application for leave to appeal may be given may be extended by this Court: s 417(2) of the *Criminal Code*.

[5] The lawyers for the applicant filed two affidavits in support of his applications. Both affidavits were sworn by Scott William Casey on 4 April 2022. One affidavit (the first affidavit) is directed towards the application for extension of time, and the other affidavit (the second affidavit) is primarily directed towards the application for leave to appeal. From the second affidavit it is clear that the applicant's proposed grounds of appeal against sentence are:

- (a) the sentencing judge failed to give sufficient regard to the principle of totality;
- (b) each of the sentences imposed are manifestly excessive in all the circumstances.

[6] In support of the application for leave to appeal against sentence, Mr Casey, in the second affidavit, stated that the applicant intended to rely upon the following:

- (a) the sentencing Judge failed to give sufficient weight to the common law principle of totality and undervalued mitigatory factors;
- (b) the applicant's limited criminal history with no similar offending;
- (c) the applicant had not previously served a period of imprisonment;
- (d) the applicant has ongoing health concerns, including heart issues and sleep apnoea;
- (e) the offending was out of need due to financial strains at the time, not out of greed;
- (f) the applicant's prospects for rehabilitation are very good;
- (g) whilst the total amount of money obtained was not insignificant, it was under \$100,000; and
- (h) the applicant has a daughter who was born after the sentence date and who is now almost 12 months old and has not seen her father.

[7] Mr Casey's first affidavit, in support of the application for extension of time, states that Mr Casey first had contact with the applicant whilst appearing on his behalf in proceedings at the Family Court of Australia in Darwin in July 2021. At the conclusion of those proceedings, the applicant and Mr Casey discussed the applicant's criminal trial and his intention to appeal his convictions and the sentences imposed. The applicant advised Mr Casey that his previous counsel had notified both the Director of Public Prosecutions and the appropriate Registrar of the Court of his intention to apply for leave to appeal within the 28 day prescribed period. At that time, the applicant also advised Mr Casey that he was seeking Legal Aid assistance to fund his appeal. Mr Casey advised the applicant to make contact with him should he wish to brief him for the appeal.

[8] Mr Casey deposed that in October 2021 he was contacted by a family member of the applicant to arrange a phone conference with the applicant to discuss his appeal. Over the next two or three months Mr Casey arranged a number of videoconferences with the applicant. Several of those scheduled conferences were unable to proceed due to Mr Casey's court commitments. Also, some conferences did not occur due to staff shortages and technical difficulties at the correctional facility. Throughout that period, the applicant had difficulty, Mr Casey deposed, in obtaining his hand

written notes pertinent to the appeal due to his relocation between the Darwin and the Alice Springs Correctional Centres.

[9] Mr Casey deposed that a further cause for the delay in filing the applicant's applications was the lengthy delays he faced in his dealings with Legal Aid seeking financial assistance. In his second affidavit, Mr Casey deposed that he was instructed by the applicant that the applicant has now obtained funding to prepare the appeal and provided sufficient instructions to file a notice of appeal.

[10] In an affidavit sworn 5 May 2022 and filed by the respondent, Charlotte Maybery-Reupert deposed that the respondent had been unable to confirm that notification had been provided to the Director of Public Prosecutions of the applicant's stated intention to appeal, said to have been provided by the applicant's former counsel within the 28 day period after sentence.

[11] I have had regard to the sentencing remarks of the primary Judge. I note that the proposed grounds of appeal relating to sentence do not allege that the primary Judge failed to take into account relevant material, or that the primary Judge made any specific factual or legal error in sentencing the applicant. A number of the circumstances upon which the applicant proposes relying on the appeal, as set out at [6] above, are circumstances that have come into existence after sentencing (e.g. circumstance (h)), were

mentioned by the primary Judge, or were apparent from the material before the primary Judge.

[12] The facts found by the primary Judge are not in dispute. The primary Judge found that between March 2017 and August 2017 the applicant engaged in nine separate acts of fraudulent conduct netting some \$96,687.71. In addition, the applicant stole a valuable piece of industrial equipment valued at approximately \$50,000.

[13] The explanation provided for the applicant's failure to seek leave to appeal within the prescribed period of 28 days is unsatisfactory, as is his explanation for his continuing failure to seek leave to appeal prior to 4 April 2022. Meaning no disrespect to Mr Casey, the information provided gives little detail of the applicant's instructions to and dealings with his former lawyers nor his dealings with the Legal Aid Commission. The present applications came more than one and a half years after the date of the applicant's conviction and sentence. In my opinion, that delay has not been adequately explained.

[14] More importantly, I am satisfied that the applicant would have virtually no prospect of success on any appeal against sentence. It is not alleged that the primary Judge made any specific error of fact or law. By virtue of the provisions of s 52 of the *Sentencing*

Act 1995 (NT), the primary Judge was entitled to impose an aggregate sentence of imprisonment for all of the offences of obtaining a benefit by criminal deception, provided that the aggregate sentence did not exceed the maximum term of imprisonment that could be imposed if a separate term were imposed in respect of each offence. The maximum penalty which could have been imposed by the primary Judge, if a sentence had been imposed on each offence, was 63 years' imprisonment. It cannot be suggested that the term of four years' imprisonment imposed by the primary Judge was such as to be manifestly excessive.

[15] The primary Judge's starting point in sentencing for the offence of stealing was 18 months' imprisonment. This was reduced by four months to reflect the applicant's plea of guilty to that charge. This resulted in a sentence of 14 months' imprisonment. This was against a maximum penalty of seven years' imprisonment. In my opinion, any suggestion that this sentence was manifestly excessive is unsustainable.

[16] The majority of the sentence imposed by the primary Judge for the offence of stealing was ordered to be served concurrently with the aggregate sentence imposed for the offences of obtaining a benefit by criminal deception. These were separate offences, involving separate victims. The only basis upon which one could explain the

significant degree of concurrency between the sentences is a recognition by the primary Judge of the need to consider totality. Any ground of appeal alleging manifest excessiveness of the total sentence or a failure to consider the principle of totality is unsustainable.

[17] In my opinion, the application for an extension of time in which to seek leave to appeal should be refused on the ground that the applicant's delay in seeking an extension of time has not been adequately explained. Even if I were found to be wrong in that conclusion, I would have dismissed the applicant's application for leave to appeal on the ground that there is no realistic prospect of success.
