

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Faukona J.)
COURT FILE NUMBER:	Criminal Appeal Case No. 42 of 2014 (On Appeal from High Court Criminal Case No. 77 of 2010)
DATE OF HEARING:	WENESDAY 15 APRIL 2015
DATE OF JUDGMENT:	FRIDAY 24 APRIL 2015
THE COURT:	GOLDSBROUGH P, WARD JA, WILSON JA
PARTIES:	Popoe Appellant -V- Regina Respondent
<u>Advocates:</u> Appellants: Respondent:	Mr. Resly with Mr. Lawry – P/Solicitor Appellant Ms. Joel with Ms Olutimyani – DPP Respondent
<u>Key words</u>	LEAVE TIME LIMITS EFFECTIVE DATE OF CONVICTION
EX TEMPORE/RESERVED:	RESERVED
ALLOWED/DISMISSD	LEAVE GRANTED
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JUDGMENT OF THE COURT

1. This is a renewed application for further time to give Notice of Appeal, the same application having been refused by a single Justice of Appeal. That refusal, determined on 25 February 2015, was communicated in writing to counsel for the intended Appellant on 10 March 2015.
2. The application followed the conviction for manslaughter after trial which concluded on 12 September 2014. Judgment was delivered on 14 October 2014 and sentence subsequently imposed on 6 November 2014 - a sentence of ten years imprisonment. The sentencing hearing was itself conducted on 30 October 2014.
3. The Notice of Application for extension of time was filed on behalf of the intended Appellant on 18 November 2014. It was supported by sworn statement. It include a draft Notice of Appeal and in all other respects complied with the relevant requirements of seeking leave.
4. The sworn statement in support sets out the facts which led to the need to seek leave. In short the application became necessary, on one view of the facts, because a conviction had been recorded on 14 October 2014 and the Notice of Appeal had not been filed before 13 November 2014.
5. Sentencing, as referred to above, did not take place until 6 November. It is understandable that counsel for the intended Appellant did not tender advice on an appeal against sentence until after its imposition and it is equally understandable that advice about an appeal against conviction was not tendered until the final outcome of the proceedings had been determined by the imposition of the eventual sentence.
6. There is also an application for leave to appeal against sentence, itself filed on 18 November 2014. There is a requirement for leave even absent late filing. It is suggested

here that the application for leave was filed within time, having been filed just twelve days after sentence was imposed.

7. Both applications for leave went before a single judge and both were refused in a single decision.
8. On the leave to appeal against conviction out of time the reason for the request and the ground for refusing the request concerned nothing but the notion that the failure was that of counsel, not of the intended Appellant, due to work pressure and other matters solely affecting the ability of counsel to comply with the relevant time limits. There is nothing put before the single judge which touches on anything done or not done by the intended Appellant. All the material is confined to the actions of counsel and the reasons for refusal themselves reflect that.
9. The appeal against sentence is grounded on the sentence being manifestly excessive and of the characterisation, by the sentencing judge, of the offence to be within the higher range of seriousness.
10. Falling as it does outside the ambit of the submissions made to the Full Court no decision has been made on the point but we note that there appears to be an issue with when time for an appeal starts to run. We note the provision contained in section 26 of the Court of Appeal Act [Cap 6] suggesting that time begins at the date of conviction. There is no reference to date of sentence and the logical conclusion, on a strict interpretation, is that it is necessary to file an application for leave to appeal against sentence perhaps even before sentence has been imposed in the event that there is going to be a delay following conviction prior to sentence of more than thirty days.
11. It seems, perhaps, to be more satisfactory if that were not the case. That may involve a more circumscribed use of the word “conviction”. That word appears to be capable of more than one meaning, the meaning varying according to context. At the end of a trial it is perhaps more useful to describe the decision as the verdict of guilty or otherwise than to announce the recording of a conviction if it is the case that a conviction should only be recorded after subsequent steps have been complied with or met. In other jurisdictions the court’s acceptance of the verdict by a step such as the administration

of the allocutus must be concluded before there is a conviction. The closest equivalent in this jurisdiction is the application of section 276 of the Criminal Procedure Code [Cap 7]

12. Section 276 itself is not helpful in this regard, referring as it does to the accused being 'convicted'.
13. There can be found useful discussions on this subject from Queensland in *R v Collins; ex parte Attorney-General of Queensland* [1994] QCA 467 and in from Victoria *DPP v Nguyen & Anor; DPP v Duncan & Anor* [2009] VSCA 147. It is of particular importance in this jurisdiction to arrive at a common understanding of the position in the light of the silence to be found in section 26 of Cap 6 on the question of an appeal against sentence. There appears to be no different time prescribed for an appeal against sentence. Indeed one might conclude that the drafter never anticipated that a conviction would be recorded other than at the time of the imposition of sentence. It is equally apparent from his remarks that the learned sentencing judge felt that time began after he imposed the sentence as otherwise his closing remarks about the right to and the time for appeal would have been bereft of meaning.
14. Turning to the matters which were addressed before this Court and before the single judge on which we do propose to make findings, it is apparent that nothing within the material refers to any failure on the part of the intended Appellant. No reference is made by the single judge to the fairness of subjecting the intended Appellant to a restriction on appeal because of the failure of counsel to act with the necessary diligence and speed. That, it appears to this Court, is a matter crucial in determining whether the intended Appellant should be deprived of his right to appeal. His own failure should perhaps attract its own consequence, but when would it be fair or just to visit on him the failure, if shown, of his counsel?
15. Leave to appeal out of time against conviction to the extent that it is necessary is granted. Leave to appeal against sentence is similarly granted both in terms of an extension of time to the extent that it may have been necessary and substantively. We seek the assistance of counsel in speedy preparation of the appeal and offer to hear it within this session subject to available time after already listed matters and provided

the parties are in any position to present it. We encourage counsel further to investigate the position within this jurisdiction as to when a conviction should be properly said to be effective for appeal purposes and perhaps make submissions accordingly to the appropriate trial court on another occasion.

GP Goldbrough
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Goldbrough P
President of the Court of Appeal



J Ward
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Ward JA
Member of the Court of Appeal



Margaret Wilson
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Wilson JA
Member of the Court of Appeal



