DISTRICT COURT OF QUEENSLAND

CITATION:	*R v Ransley* [2014] QDC 155
PARTIES:	**THE QUEEN (respondent)** **v** **MELISSA EMMA JEAN RANSLEY (applicant)**
FILE NO/S:	1053/14
DIVISION:	Criminal
PROCEEDING:	Section 590AA application
ORIGINATING COURT:	District Court
DELIVERED ON:	27 June 2014
DELIVERED AT:	Brisbane
HEARING DATE:	22-23 May 2014
JUDGE:	Butler SC DCJ
ORDER:	**Leave granted to the applicant to withdraw her plea of guilty.**
CATCHWORDS:	CRIMINAL LAW – PLEAS – GENERAL PLEAS – PLEA OF GUILTY – WITHDRAWAL AND RESTORATION OF PLEA – GENERALLY – APPLICATION – application to withdraw guilty plea – whether applicant understood the nature of the charges – whether pleas were entered freely and voluntarily
COUNSEL:	J Sharp for the applicant C Minnery for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Qld) for the respondent

HIS HONOUR: I reserved my decision in this matter. The applicant, Ms Ransley, seeks leave to withdraw a plea of guilty entered by the filing of a signed document in the Brisbane Magistrates Court on the 3rd of June 2013 as part of the registry committal process. A Deputy Registrar, on 12 June 2013 committed the applicant for sentence before the District Court at Brisbane. Subsequently, the Director of Public Prosecutions presented an indictment in the District Court charging the applicant with two counts of fraud.

The applicant has not been called upon as yet to enter a plea to the indictment before the District Court. This pre-trial application requests that the Court exercise its discretionary power to direct the entry of a plea of not guilty, notwithstanding the fact that the applicant has been committed for sentence. It is argued on behalf of the applicant that her plea was not entered in the exercise of a free choice in her own interest. The Director of Public Prosecutions opposes the application. I've concluded that this is an appropriate case for a grant of leave to set aside the plea of guilty. I will now provide my reasons for that decision.

I turn, first, to consider how the plea of guilty was entered. The applicant did not enter her plea of guilty in open Court, rather, her plea was entered by way of a documentary process implemented in accordance with section 114 of the *Justices Act* 1886. That section provides for a written notice to be given to the Clerk of the Court stating that the defendant wishes to be committed for sentence. Section 114, subsection (2) requires that a written statement signed by the defendant stating he or she pleads guilty to the offence must be filed with the notice requesting committal. The applicant signed such a notice on or about 29 May 2013. The form stated:

> *I, Melissa Emma Jean Ransley, plead guilty to the following offences.*

It then set out the offence as being:

> *Fraud, dishonestly obtaining property from another by employee value of /over $5000.*

The form went on, I quote:

> *I acknowledge that I am not obliged to enter any plea and have nothing to hope from any promise, nothing to fear from any threat that may have been held out to induce me to make any admission or confession of guilt.*

The applicant admits that she signed that form. The consequence of filing those two documents is that a Court registrar may commit the person for sentence; that is what happened in this instance. It would seem that the legislation intended that a plea of guilty made in this way would have the same effect as a plea of guilty before a magistrate conducting committal proceedings. The applicant did not seek to argue to the contrary and, consequently, I need not explore that aspect further.

It may be doubted whether, in these circumstances, the applicant has been convicted. A plea of guilty, of itself, does not constitute a conviction: *The Queen v Nerbas* [2011] QCA 199 at paragraph 7. Whether a conviction has occurred or not it seems undoubted that, in circumstances where a sentence has not occurred, a plea may, with leave, be withdrawn prior to sentencing taking place.

What is the test for exercise of the discretion? The applicant bears the onus of persuading the Court that she may withdraw her plea of guilty: *The Queen v Gadaloff* [1999] QCA 286 at paragraph 4. The applicant must show a miscarriage has occurred, or would occur, if she was not allowed to withdraw her plea: *Meissner v the Queen*, (1995) 184 CLR 132 at 157. That test has application not only on appeal but

also when a determination is to be made by judges at first instance: *The Queen v Boag* (1994) 73 ACrimR 35 at pages 36 to 37 and *The Queen v Mundraby* [2004] QCA 493 at paragraph 11. The test was explained further by Justice Muir in *The Queen v Wade.* I quote:

> *A miscarriage of justice may be established in circumstances in which, for example: in pleading guilty, the accused did not appreciate the nature of the charges or did not intend to admit guilt; on the admitted facts, the accused would not, in law, have been liable to conviction of the subject offences; the plea was not made freely and voluntarily, such as where it was obtained by an improper inducement or threat or it is shown that the plea was "not really attributable to a genuine consciousness of guilt". And, of course, it will normally be impossible to show a miscarriage of justice unless an arguable case or tryable issue is also established.*

See [2011] QCA 289 at paragraph 51. His Honour went on to qualify those comments by explaining that the discretion cannot be fettered by any preconceptions or limitations arising from the approach taken in previous decisions, see paragraph 52.

The plurality in the High Court decision of *Meissner v the Queen* (1995) 184 CLR 132, at page 141, held that a guilty plea may be set aside as a miscarriage of justice where it is not, I quote:

> *Entered in the exercise of a free choice in the interests of the person entering the plea.*

What is the case against the applicant? The applicant is alleged to have dishonestly obtained $368,396.47 from her employer, Mipela GID Pty Ltd. There is forensic accounting evidence that a total of $267,926.82 was transferred by 69 unauthorised transactions to the applicant's personal bank account between June 2008 and September 2012. The accountant identified a further $100,469.65 of unexplained transactions alleged by the Prosecution to be fraudulent.

The applicant was employed as an office manager with the company during the relevant period. It was part of her duties to prepare payments for suppliers of the company. She would take the invoices to the managing director, Hayden McDonald, to authorise payment. Mr McDonald would check that the invoices corresponded with the computer entries made by the applicant and then enter an online authorisation. The false transactions came to notice when the applicant went on leave. She was interviewed by police on 16 January 2013. She did not deny receiving money from the company in the way alleged, however, she told police that Mr McDonald knew about and authorised the payments as a way of secretly remunerating her. She denied that her transfer of funds was fraudulent. The agreed schedule of facts sets it out as follows, I quote:

> *She told police that McDonald had authorised transactions as additional payment for extra duties she performed through her employment. The accused also told police she had been in a romantic relationship with McDonald. She stated that, whilst they didn't have an affair, they talked about leaving their partners and being together. The accused stated she had tried to leave the*

> *complainant company, but that McDonald was upset about her leaving, that the complaint was vexatious and made in response to her leaving the company.*

Those are the facts relied upon by the Prosecution. The explanation given by the applicant was that, by agreement with McDonald, her actual pay was substantially in excess of what appeared on the books. McDonald, according to the applicant, wished to keep these extra payments from the knowledge of his wife, who is also involved in the business. The Prosecution rejects the account given by the applicant as being untruthful. It is inconsistent with the version provided by Mr McDonald. He says he did not authorise the alleged transactions, however, if the applicant's account is true or if a jury were to be left in reasonable doubt as to its truth, then it would constitute a good defence to the charges.

It is submitted on behalf of the applicant that she didn't enter her plea of guilty out of a genuine consciousness of guilt, but did so under undue pressure brought about by incorrect advice from her solicitor and a lack of real choice. The issue to be determined is whether the applicant has established a miscarriage of justice on this basis. It is submitted by the respondent that a miscarriage of justice has not occurred.

The Crown says that the applicant's prospects are indeed poor. She was thoroughly aware of the case she was facing and the fact she was given strong advice on sentence did not, it was argued, amount to an inducement or threat. The Prosecution says that, on the evidence, the applicant was not under undue pressure but merely made a practical decision aware of the potential sentence and mindful of her financial position. The Prosecution submits the plea of guilty should stand.

The applicant bears the onus of establishing a miscarriage of justice. Where, as here, the applicant argues that she was persuaded to enter a plea of guilty, the principles stated by the High Court in *Meissner v the Queen*, (1995) 184 CLR 132 at pages 141 to 142, are relevant, I quote:

> *A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty. An inducement to plead guilty does not necessarily have a tendency to pervert the course of justice, for the inducement may be offered simply to assist the person charged to make a free choice in that person's own interests. A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence.*

Nevertheless, the Courts have held that inappropriate legal advice may give rise to a miscarriage of justice. Wood Chief Justice at Common Law said in the *Queen v Kouroumalos* [2000] NSWCCA 453, at paragraph 17, that a miscarriage may occur, I quote:

> *Where an accused is persuaded to enter a plea of guilty by reason of imprudent and inappropriate advice tendered to him or her by legal representatives.*

The *Queen v Wilkes* (2001) NSWCCA 97 was such a case. The court of criminal appeal accepted that advice given by a barrister in the course of a trial was imprudent and inappropriate and took into account that the appellant had continued to protest his innocence and accepted the advice as his best way to achieve the minimum sentence possible. In the Queensland case of the *Queen v Nerbas* [2011] QCA 199, a miscarriage was found to have occurred where the defendant was induced to plead guilty by his lawyer's unjustified threat to withdraw. However, in applying these principles, it is worthwhile being mindful of what Muir J said in the *Queen v Wade*:

> *For good reason, courts exercise great caution in determining applications to set aside or withdraw guilty please.*

I now turn to the evidence. It is submitted on behalf of the applicant that her plea was brought about by incorrect advice and made under pressure. The applicant attended on Ms Paudyal of Slater & Gordon on 16 May 2013 for a conference. As she resided in New South Wales, further conversations were by telephone. After having received legal advice from the solicitor, the applicant, by email on 27 May 2013, said:

> *After speaking with my family and weighing up financially, I agree with you that the best form of action to take is plead guilty. It is very hard but I think this will be the best outcome for all involved.*

On 29 May 2013, the solicitor forwarded to the applicant the draft notice for her signature with the box electing to enter a plea of guilty already ticked. The applicant signed the form and it was filed on 3 May 2013.

Both the applicant and Ms Paudyal were called and examined on the application. I found Ms Paudyal to be a persuasive witness. She gave her evidence in a forthright way and was frank in respect of her mistakes and admissions. Her evidence was internally consistent and where it deviated from her affidavit, she gave a plausible explanation. On the other hand, I did not find the applicant to be a persuasive witness. Where the evidence of these witnesses is in conflict, I prefer the evidence of Ms Paudyal.

The solicitor informed the applicant as to the case against her. She read the substance of the QP9 and the statement of Mr McDonald to the applicant. In addition, the applicant said she had read the forensic report. The applicant had been interviewed at length by the police about the alleged frauds. The combination of all this information would have alerted the applicant to the allegations. I'm satisfied she understood the case she faced. Other aspects of the advice provided to the applicant do, however, raise concerns. Ms Paudyal says that from their very first consultation, the applicant maintained that Mr McDonald was aware of and authorised the transfers to her personal accounts. The applicant never waivered from this position during all her dealings with the solicitor.

In spite of this insistence, the solicitor appears not to have accepted this as a legitimate defence. On her evidence, she assumed the applicant had no plausible

defence and advised that her prospects at trial were very limited. Ms Paudyal did not consider or advise that an option would be to delay a plea of guilty until the potential defence raised in the police interview could be explored further. A committal for trial, so the full strength of the prosecution case as apparent from the full brief of evidence could be examined, was an option the applicant was not advised of. Rather, the advice given was that there were only two options – to plead guilty or to plead not guilty.

The applicant was advised that if she pleaded guilty promptly, this would reduce the severity of the penalty. Other factors placed pressure on the applicant to make a quick decision. Ms Paudyal said that an independent financial report would be highly expensive. It was also apparent that a trial would be expensive. The applicant had separated from her husband, did not have access to funds, and was fearful her estranged husband would use the situation to her disadvantage.

In addition, she was pregnant, and it was a high-risk pregnancy. The applicant was given no advice as to the availability of Legal Aid. The applicant was told that the solicitor had never had a pregnant client that had gone to jail. This may have given the applicant false hope that any sentence would be non-custodial. Although the applicant pleaded guilty, she did so reluctantly. The applicant said in her email that the plea of guilty would be "very hard". This statement may be understood in the context of Ms Paudyal's concession that the applicant agreed with a "heavy heart" and was upset that Mr McDonald would get off scot-free, notwithstanding his involvement. As I say, the applicant never retracted her insistence that she acted with Mr McDonald's authority.

The first conference between the applicant and a barrister briefed for the sentence was held on 22 August 2013. The applicant just before then for the first time had seen the Prosecution schedule of facts. She voiced serious concerns and suggested she was not prepared to proceed by way of sentence on those facts.

In my view, the applicant made her decision to enter a written plea of guilty in circumstances where she was not correctly advised on the defence available to her. She had, on the advice given to her, no realistic option but to enter a prompt plea of guilty. Her decision was made on the basis she had no real choice but to so plea. That advice was imprudent and inappropriate. Furthermore, on the advice she was given, she was pressed to decide quickly at a time when her health and financial situation placed her under considerable pressure.

The applicant has given an explanation for her behaviour which, if accepted by a jury, will provide a full defence to the charges. She never at any time desisted from asserting she acted with Mr McDonald's authorisation. I am satisfied her decision to plead guilty was not based on a genuine consciousness of guilt. It was induced by inappropriate legal advice and in circumstances where she was subjected to pressure. I find the plea was not entered in the exercise of her free choice in the applicant's own interest. The entry, in those circumstances, constituted a miscarriage of justice. The order of the Court will be that leave is granted to the applicant to withdraw her plea of guilty filed in the Magistrates Court of Queensland at Brisbane on 3 June 2013.