

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry  
Brisbane No B42 of 2000

Between -

RICHARD STEPHEN GUNTER

Applicant

and

THE QUEEN

Respondent

Application for special leave to appeal

Office of the Registry  
Brisbane No B71 of 2000

Between -

RICHARD STEPHEN GUNTER

Applicant

and

THE QUEEN

Respondent

Application for leave to appeal

KIRBY J HAYNE J

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON WEDNESDAY, 27 JUNE, 2001, AT 12.18 PM

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**MR M.R. GREEN:** If it please the Court, I appear for the respondent. (instructed by the Crown Solicitor for Queensland)

**MR R. S. GUNTER** appeared in person.

**KIRBY J:** Now, you are seeking leave – this is not a special leave application – this is an application for leave to appeal from orders of a Justice of this Court, Justice Callinan, so you do not special leave; you merely need leave, I think. That is correct, Mr Green, is it not?

**MR GREEN:** I think so, yes, your Honour.

**MR GUNTER:** There are two matters

**KIRBY J:** Just allow me to ask a question of Mr Green. I just noticed that there was an order for cost in this matter. It is a criminal matter, is it not? Would that be a regular order? Ought that be deleted in the event that you succeed? Would you can give some thought to that and I will ask you about that later.

**MR GREEN:** Yes, your Honour.

**MR GUNTER:** Your Honour, they are criminal matters that are before this Court, and, yes, the fact of Court costs involved with it do not come into play in this situation.

But, basically, it was just an application of expedition of your application, was it not? That is what you were seeking from Justice Callinan? That is basically what you went to his Honour to seek, expedition.

**MR GUNTER:** Yes, your Honour.

**KIRBY J:** And his Honour said, "I would like to help you but we have all these other cases, including criminal cases where people are in custody", and on the basis of the material you put before his Honour, he did not feel that you had made out a case why you should leap-frog over all those people and be heard before their cases, so he did not grant the expedition. What is the mistake in that or the error that you complain about?

**MR GUNTER:** The mistake is – look, your Honour, I have an oral submission I will hand up that would make it a lot easier for you.

**KIRBY J:** You would rather us read your oral written as you have reduced it to writing?

**MR GUNTER:** I will give you my oral submission. It make it a lot easier to all concerned. There is my oral submission.

**KIRBY J:** Have you shown a copy of that to Mr Green? Have you got that Mr Green?

**MR GREEN:** Not yet, your Honour. I have now.

**KIRBY J:** Very well. We will just take a few moments to read that, but, unfortunately, your time will be ticking by whilst we are reading it. You understand that?

**MR GUNTER:** Yes, I understand that.

**KIRBY J:**

**KIRBY J:** But we can do that, perhaps, more quickly. If you would like to sit down and have a glass of water, we will read this and come back to you when we have done that.

Mr Gunter, a lot of that material was already in the written submissions which we have read in your file, and both of us have read the written documentation. Now, it may be that there is a little confusion on your part and it is easy enough to make if you are not a lawyer, but courts like this have to take things in steps.

**MR GUNTER:** I understand that.

**KIRBY J:** We are taking this only in the step of your application for special to appeal from Justice Callinan. Therefore, we have to look what was it that Justice Callinan was doing, and if you look at page 1 of the application book, you will see that his Honour was dealing with an application to him

**MR GUNTER:** Which appeal is this?

**KIRBY J:** I am talking about matter No 71 of 2000. We are dealing with the application for leave from Justice Callinan first. Now, if you look at that, the only thing that was before Justice Callinan was an application for the hearing to be brought on forthwith. So that is, effectively, an application for expedition of the hearing. You follow? You have other applications but they were struck out of the document which I have had. If you look at Justice Callinan's reasons, he only dealt with the question of whether you should have had expedition. So all these other matters are not really relevant to that application

**MR GUNTER:** That is not correct, your Honour. When the chamber summons went in, the chamber summons, as it went in, pursuant to Order 58 rule 4(3), vexatious, frivolous and abusing of process, which was in the High Court before Callinan. I have already been before Justice McHugh in the High Court. I said, "Was I a vexatious litigant?" He said, "No, you are not a vexatious litigant."

Three times I have tried to appeal Order 58, rule 4(3), in the High Court, and the paperwork has been obstructed by the judicial - by the Court staff. Now, I ended up on a criminal matter in a civil jurisdiction. Now, I got 60 days for not going through a weighbridge. It had a stay on proceedings in the State Supreme Court. They issued an arrest warrant while there was a stay on proceedings. That is contempt of court by the Crown Solicitor. How

the Crown Solicitor got to be into this is because of the statutory fraud that was committed by the courts by removing the letters patent. Now, the thing is I ended up doing 60 days - -

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I know you want to go into that, but can I just explain to you. I do want you to concentrate on the matter where you can help the Court. The actual order which Justice Callinan made, the primary order, is that the application to expedite the hearing of this matter be dismissed. Courts do not deal with things at large, they deal with orders, and you are seeking leave to appeal from that order, and that is all that his Honour ordered, that he refused to grant you expedition. None of all the large other matters that you have dealt with are relevant to the order that Justice Callinan made and, therefore, you have to try to persuade us his Honour's order in that respect was in error.

**MR GUNTER:** Simply, your Honour, it should have proceeded because of what was in issue was the fundamental flaw. There is a fundamental flaw. The High Court has ruled - and I do not remember what case it is off the top of my head - but if a judge has erred at law, it is a judicial review. If you are right at law and you appealing either the sentencing or the conviction, that is an appeal. They are two totally different exercises in themselves.

Now, what I maintained, your Honour, that in the first instance when I brought before and charged in the name of the Queen, I raised a question which went before Justice Fryberg in the first instance, and there was a stay put on the proceedings, and the writ of summons B112 of 1996 was in the High Court.

**KIRBY J:** I know you say that, but at the moment the Court is concentrating on your application for leave to appeal from the order of Justice Callinan, and that order only dealt with expedition. Test it this way: if you got leave, all that the Full Court would do would be to review his Honour's decision refusing you expedition.

**MR GUNTER:** All right, your Honour. I think what we want - this could be - I will just refer with my friend here. When this was put in I was out on bail. Because I tried to appeal to the court, the Appeal Court, they told me that I was not entitled to an appeal for bail in their court and I had to go up to the High Court. I put in for a bail application in the High Court, and was told that I had to go back to the Court of Appeal with my bail application. When I got back there, he said, "Oh, no, no. It's gone out of our court"; we have to go back up to the High Court. Meanwhile, I am sitting in prison. Now, the thing is if it had been expedited and I was entitled to get a bail application and my bail extended at the time, I would not have served another 30 days in prison. I still have 40 hours community service to do, which I have said, "I do not want to do any of the 40 hours community service until this thing is determined."

**KIRBY J:**

**KIRBY J:** Well, this is not relevant to the matter that is before us, Mr Gunter. I am sorry to interrupt you but I really do have to focus you on the matter that is before us. You are seeking leave to appeal. We are dealing first with the application for leave to appeal from Justice Callinan, and if you do not want to deal with, well, so be it, but I am trying to direct you. His Honour refused expedition. That is the only order relevantly that he made, and you are seeking leave to appeal from it. That is at page 28 of the application book. Now, you have to show some error. His Honour seemed to give very reasonable reasons. He said other cases are before the Court and you have not shown a reason why you should leap-frog them, and that he would not give you – now, that is a discretionary decision.

**MR GUNTER:** Well, the thing was, your Honour, that if, in fact, that I have been unlawfully incarcerated – no, hang on. Just let me say this.

**KIRBY J:** Well, presumably you were incarcerated under some order of a Court. They would not just keep you incarceration without an order.

**MR GUNTER:** But if I was incarcerated and I should not have been there because we ended up in a civil jurisdiction rather than a criminal jurisdiction because of this – see, what happened was I started off in a criminal jurisdiction. I ended up in a civil jurisdiction. That is how the Crown Solicitor got involved with it. Now, the thing was that there was never appeal – the appeal process – the whole thing went haywire when it ended up in the civil jurisdiction because of the gutting of the bloody laws of this land by the gutting of the Governor's Act.

**KIRBY J:** This is not relevant to the matter of your application for leave to appeal from Justice Callinan, I am afraid. It is a very small little order made everyday in courts all over this country by judges and magistrates giving expedition or refusing expedition.

**MR GUNTER:** Refusing me to appeal – refusing my right to – hang on, your Honour. I think we are getting cross - is not this application - was not this done when I was incarcerated?

**KIRBY J:** I am dealing with the matter which is the one that went to Justice Callinan, B71 of 2000. That is the one I am dealing with.

**MR SKYRING:** Excuse me, your Honour, can I be heard

**KIRBY J:** Who are you?

**MR SKYRING:** Can I be heard amicus curiae in this matter

No, I think we have enough help from Mr – Mr Gunter seems to be quite an intelligent man, and he understands what I am saying, but he does not seem to want to focus on the matter.

**MR GUNTER:** No. I think what we seem to be in cross-purposes with, your Honour, is my application to appeal

**KIRBY J:** There are two matters before us, and I have directed you first to the application for leave to appeal from Justice Callinan.

**MR GUNTER:** I think you will find that this was while I was incarcerated.

**KIRBY J:** Well, it might be, but I have dealt with that first, and the question is why should we interfere with the discretionary order Justice Callinan made?

**MR GUNTER:** I think you will find if this is the case I have already done the time and I will be seeking compensation for unlawful incarceration.

**KIRBY J:** That is a different matter. Well, now, can I bring you, then, to matter No 42 of 2000, which is the matter where there are two Court of Appeal judgments, one by Justice Davies, which refused to disturb the discretionary order of Justice Fryberg and the other by Justice McMurdo who also refused to grant you the relief you sought, which relief you sought on the basis of some argument you have concerning the currency, which Justice Pincus regarded as complete nonsense. Now, what do you say in relation to those applications?



**KIRBY J:**

**MR GUNTER:** Well, your Honour, this is where the problem lies. Now, I raised the question of this currency question back in 1994, whenever it happened - occurred in the first instance, on how to lawfully pay a fine considering the way the statutes were written, and when we came before the magistrate they threw the book at me. I said, "I have got 60 days for not going through a weighbridge and I got 48 days for my dog walking on the road." Now, I have served all the prison time that is required, however, I point out that when we came before Justice Fryberg he put a stay of proceedings because there was writ of summons B112 of 1996 in the High Court.

Now, I was hit with Order 58, rule 4(3), and I appealed – put in the paperwork to appeal the decision of a single judge. Now, that was in train for quite a few years because I renewed the writ, and in the end I endorsed it with a qui tam, an action on behalf of the Queen and country. Now, I am entitled to do this under our law.

Now, the thing is, your Honour, we then came before – mind you, when we before Fryberg and Muir we were in a civil jurisdiction on a criminal matter. Now, the thing is, it has got to the situation now, and I am quite aware of this, that there is still a discrepancy in the Acts, they are interlocutory and also I know for a fact that the Electoral Commissioner accepted legal tender being face value of currency in both State and federal election. Which means that if the Electoral Commissioner accepted it at face value, as laid out under the *Currency Act*, there is still a discrepancy in the *Currency Act*.

Now, the situation, as I see it, your Honour, I came into Court – I have been before 64 judges to date not counting you people. Now, I have been denied justice all the way through the thing – a statutory violation from the *Imperial Acts Applications Act*, Queensland. I have ended up incarcerated twice because of abuse of process. I now find that I was charged in the name of the Queen and the letters patent have been removed and the current letters patent that are in train are invalid because there was not a referendum. So I believe, your Honour, it raises the question of where the hell has this country gone. A hundred years ago we chucked in a critical **Constitution** that says the courts and judges must abide by the laws passed by the Parliament. Well, here we are a 100 years later we are, a going on about how great our system is, and, yet, here we are – a guy has come into Court - and we find we have not got civil liberties anymore. They have been eroded because of malfunction and malfeasance or malfunctions, or whatever the words are, and we find that there is no referendum. They change the Governor's Act.

We find that a criminal in a criminal jurisdiction is not entitled to come in under a judicial review if the judge has erred at law. Now, I got hit with court costs on a criminal matter. That is in direct violation of the *Imperial Acts Application Act*, Queensland. I did 30 days for court costs. Now, I believe that what we are talking about now is to which are the laws of the land. Is it a Magna Carta based law or are we based on mercantile law when you come

into court and you have to pay. Where is a person like myself stand who is a pauper, who is relying on a pension, who is on a pension and comes in and cannot afford a barrister, who comes in and he ends up in the guidelines of a *Dietrich Case*. Your Honour, we are just – the general population are being screwed because

**KIRBY J:** Yes. Well, now you have only a few minutes.

**MR GUNTER:** I know that, your Honour, but our problem is that our court – our system has gone – has made the mistake. I have ended up in a civil jurisdiction because the law was changed. It should have been a criminal matter. It should never – the arrest warrant should never have been issued while there was a stay of proceedings. That is contempt of court. Then we have got, under section 204 of the Queensland *Criminal Code*, if you do not uphold the statutes then it is a misdemeanour and it is prison time for you.

Well, if you are sent.....prison for the dog walking on the road, then I am sure that you can see fit enough that heads must roll and you have got to get our legal system back on its correct track, which is Magna Carta based law, and this – you know, this will affect everybody. I mean, these people – the whole lot of you here in Court today, we come in here and it is court costs, court costs. A person like myself comes in here who is destitute, who has been denied access to his livelihood by the system, cannot appeal it. I am not entitled to appeal. I have not seen my kids since 1990 because I cannot come into court.

Dead set, your Honour, I have got to the stage now where the legal system is a joke. It really is a joke because of the fact that the Acts are there. It is not new law. It is welltried true law. We have a thing called

Magna Carta, but not in the State of Queensland, not in the courts of the Commonwealth. It is a joke. It really is. The law is there. I am entitled to an appeal. Now, I have never been – never had a bloody appeal. I have ended up in the court and they say, “Oh, we don’t want to look at that”, or, you know – as

I said, after 64 judges

**KIRBY J:** Mr Gunter, your time is up, I am afraid. Mr Green, I asked you a question at the outset concerning the costs in the matter that came before Justice Callinan. That seems to have been a slip; is that correct or not?

**MR GREEN:** Initially, your Honour, as the transcript indicates, I sought that costs be reserved in relation to that, the background of the matter being that the matters in B42, which sought expedition

**KIRBY J:** That is a different matter, but in both of the matters they are within criminal proceedings. Am I wrong in making that assumption?

**MR GREEN:** Yes. In my submission, your Honour, all three convictions that Mr Gunter refers to were, for want of a better term, simple offences that were prosecuted upon complaint and summons under the *Justices Act 1886* .

**KIRBY J:** But the party named is the Crown and you have appeared, I think, on behalf of Her Majesty the Queen. Normally the Crown neither asks for, nor provides costs in proceedings which, putting it broadly, are criminal in nature.

**MR GREEN:** The initial request for the costs was based, your Honour, on, I think, the fact that the matter was an interlocutory proceeding and the Queen was not, in fact, a party to the proceedings below.

**KIRBY J:** Well, she was named by the applicant, Mr Gunter.

**MR GREEN:** That is right. Mr Gunter in his appeal to the Full Court in the seeking against the decision of Judge Robertson in the District Court refusing him leave to extend time for service – on the first occasion that the Queen was named was when Mr Gunter named the Queen in his appeal from – or his application for leave to appeal from the decision of Judge Robertson refusing him the extension of time to serve the complainants because he was out of time under the *Justices Act* .

**HAYNE J:** Who should have been the respondent?

**MR GREEN:** It is open – the application before Judge Robertson, your Honour, was, it appears, brought ex parte. Section 222A does say that it has to be brought on notice. In fact, the criteria is that you cannot – the appellant cannot serve a notice of appeal or is unable to serve a notice of

appeal on a person concerned with upholding the complaint within a certain period of time and that faults through no fault - - -

**HAYNE J:** Do you say the proper respondent was the informant in the proceedings that give rise to all this?

**MR GREEN:** Ultimately, your Honour, it was either by ex parte if Mr Gunter could not have located them or, in fact, yes, it would have been the complainants, the initial complainants. The Crown only appeared initially before the Court of Appeal by way of assistance and in the name of Her Majesty but, as I indicated, it is really, in effect, the Crown in right of the State I am instructed.

**HAYNE J:** It is all a bit of a piece of paper, is it not?

**KIRBY J:** Mr Gunter says that he is a pauper and certainly enforcement of the order might be difficult, but the question is whether it was a slip in the first place. Do you have anything else to say?

**MR GREEN:** No, not on that question.

**MR GUNTER:** Your Honour, can I just make a point?

**KIRBY J:** Yes, very briefly.

**MR GUNTER:** Your Honour, there are two points I would like to make on this. I have done 30 days because of court costs on the – on the matter about the dog in hand. So I have already done 30 days for that. The other thing I would like to point out, not only my own behalf, but on the others – anyone that is coming down behind me.

**KIRBY J:** Do not worry about them. Just make your own submissions.

**MR GUNTER:** No, no, there are – there is a problem that under rule 13 of the old Supreme Court Rules if a pauper is deemed – you were deemed to be a pauper if you have less than £100, \$200 dated 14 December 1966. Now, that – back to the figure is extremely out of date and I feel that I should bring it to your attention and something ought to be done because there would be a heap of people who are out in the community today, especially with the unemployment and hardships that are about

**KIRBY J:** Yes, I think we understand that.

**MR GUNTER:** but something has got to be basically done about amending it.

**KIRBY J:** Two matters are before the Court. The first in time and in Court number is B42 of 2000. In that matter the applicant, Richard Gunter, seeks special leave to appeal from orders of the Court of Appeal of Queensland given on 23 May 2000. No error is shown in the decision of the Court of Appeal. No ground for special leave is shown. Accordingly, special leave is refused.

Secondly, there is B71 of 2000. The same applicant seeks leave to appeal from an interlocutory order of Callinan J refusing him expedition of the hearing of the previous matter. No basis is shown to disturb the discretionary order made by Callinan J. Leave is, therefore, refused.

A question arose concerning the order which Callinan J made, to the effect that the applicant should pay the costs of the proceedings before him. However, as that matter is not itself specifically within the proceedings which are now before us, we do not finally determine that matter.

The orders, therefore, are in B42 of 2000 special leave refused; in B71 of 2000 leave refused.

**AT 12.47 PM THE MATTER WAS CONCLUDED**