

**CITATION:** *Charlie v Victims Assist Queensland* [2012] QCATA 109

**PARTIES:** Gordon Charlie  
(Applicant/Appellant)  
v  
Victims Assist Queensland  
(Respondent)

**APPLICATION NUMBER:** APL337-11

**MATTER TYPE:** Appeals

**HEARING DATE:** 30 April 2012

**HEARD AT:** Brisbane

**DECISION OF:** **Mr Richard Oliver, Senior Member**  
**Mr Ron Joachim, Member**

**DELIVERED ON:** 30 April 2012

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **Application for leave to appeal or appeal is dismissed.**

**CATCHWORDS:** Extension of time – where applicant had little prospect of success – whether failure to take into account the applicant did not have a support person when he gave a version of events to the police – whether exercise of discretion miscarried

*Queensland Civil and Administrative Tribunal Act 2009, ss 33(3), 61(2), 142(3)(b)*  
*Criminal Code, ss 75, 359*

*Hunter Valley Developments Pty Ltd v Minister for Home Affairs and Environment*  
(1984) 58 ALR 305  
*R v King* (1936) 55 CLR 499

**APPEARANCES and REPRESENTATION (if any):**

**APPLICANT:** Ms Schaffer for Mr Charlie

**RESPONDENT:** Mr James for Victims Assist Queensland

## REASONS FOR DECISION

- [1] On 23 June 2011 Mr Charlie filed an application to review a decision of Victims Assist Queensland refusing to grant him financial assistance as a consequence of his involvement in an incident on 27 June 2007. For the purposes of the original decision and this appeal, it is not contentious that as a result of the incident Mr Charlie developed a condition of post traumatic stress disorder.
- [2] On the day of the incident both Mr Charlie and Ms Schaffer attended a meeting at Hopevale. Mr Charlie stayed in the car. However, whilst Ms Schaffer was at the meeting she was physically assaulted in the vicinity of the car and Mr Charlie heard the attacker say words to effect that, "I will kill you and that Gordon Charlie". Mr Charlie took the threat seriously and feared for his life although he was not physically injured.
- [3] The respondent's decision was made on 10 September 2011 and sent to Mr Charlie some days after that. It is immediately apparent that his application to review the decision is out of time, it not having been filed within 28 days of receiving the decision.<sup>1</sup> Because of that he has also filed an application to extend time.<sup>2</sup>
- [4] On 23 August 2011 the Tribunal decided that Mr Charlie's application to extend time should be refused. The basis of the refusal was that in the opinion of the learned Senior Member his review application had little prospect of success and it would not be in the interests of justice to grant an extension. Prospect of success is one of the matters to be taken into account in deciding whether to exercise the discretion to extend time.<sup>3</sup>
- [5] From that decision Mr Charlie has filed an application for leave to appeal or appeal. Leave is necessary because essentially Mr Charlie is challenging a factual finding that on the evidence before the original decision maker, and on review, a different conclusion on the facts should have been made. On that view of the facts, Mr Charlie's prospects would have been improved. Section 142(3)(b) provides that an appeal on a question of fact or a question of mixed law and fact may be made only if the applicant has leave of the Appeal Tribunal.
- [6] The grounds of appeal are somewhat rambling however the main contention relied on by Mr Charlie is that he was a "primary victim" as he was in the vehicle at the time of the incident. The balance of the grounds is a narrative of not only what occurred during the incident, but is also critique of the way the police conducted the investigation and did not have regard to the Queensland Police Service Vulnerable Persons Policy, which had not been implemented at the time of the interview.

---

<sup>1</sup> QCAT Act, s 33(3).

<sup>2</sup> QCAT Act, ss 33(3) and 61(2).

<sup>3</sup> *Hunter Valley Developments Pty Ltd v Minister for Home Affairs and Environment* (1984) 58 ALR 305.

- [7] It is contended that as Mr Charlie is an Indigenous person, he was not interviewed with a support person present, and therefore his initial statements to the police about his involvement in the incident should be disregarded. During the course of the hearing Ms Schaffer, who represented Mr Charlie, was directed to the central issue in this appeal and that is, whether the Senior Member fell into error in the exercise of her discretion in refusing to extend time. In her reasons, the learned Senior Member directed herself to the usual matters to be taken into account in deciding whether time should be extended. They are, whether or not there has been a satisfactory explanation for delay, the strength of the applicant's case, prejudice to the respondent, the length of delay and the overall interest of justice as to whether to grant an extension.
- [8] She found that there was a satisfactory explanation for delay even though the delay was lengthy, this, of itself is not a deciding factor. She concluded that there was no prejudice to the respondent.
- [9] In respect of prospect of success the learned Senior Member considered that Mr Charlie's review application did not have merit and was unlikely to succeed. She did so on the grounds that in applying section 26(1) of the *Victims of Crime Assistance Act 2009* she was not satisfied that he fell within the definition of a primary victim.
- [10] That of course turned on findings of fact as to his involvement in the incident. Not only did she rely on what Mr Charlie had to say in his statement to the police, but also had regard to statements made by him to third parties which indicated that the attacker was unaware that Mr Charlie was in the vehicle at the time of the incident. She accepted, without reservation for the purposes of the extension of time application, that whatever happened resulted in injury to Mr Charlie. She acknowledged that he had given several accounts of the incident but on balance she found that he was sufficiently hidden from view so that the assailant did not know he was there. On the basis of that conclusion of fact on the evidence before her, she made a finding that, as we have said, he was not the primary victim.
- [11] In this appeal, Mr Charlie, through Ms Schaffer, is in effect challenging that finding of fact to contend that the attacker did know Mr Charlie was in the vehicle and therefore her assault or threat was directed to him which resulted in injury and therefore he is a primary victim.
- [12] The learned Member had regard to section 25 of the VCA Act to determine, even in those circumstances, whether section 25 came to his assistance and whether the act of violence that is the threat was committed and concluded that the elements of the offence of making threats<sup>4</sup> would not be made out on the case presented by Mr Charlie.
- [13] That finding was open to her on the evidence that was put before her by both Mr Charlie and the respondent. Not only did the learned Senior

---

<sup>4</sup> Criminal Code, ss 75 and 359.

Member confine herself to whether the threat constituted an offence she also looked at other possible offences in the Criminal Code and could not identify any that could be made out in those circumstances. Having considered all the evidence, she came to the decision, reasonably in our view, that Mr Charlie's application for assistance in the review application had little or no prospect of success.

- [14] To interfere with the exercise of discretion is not undertaken lightly. The manner in which an appeal against an exercise of discretion should be determined is governed by established principles. It is not sufficient that the Appeal Tribunal might, in the circumstances come to a different decision but there must appear to be some error that has been made in the exercise of discretion. If the decision maker acts on a wrong principle, allows extraneous or irrelevant matters to guide or affect her mistakes the facts or does not take into account some material consideration then the Appeal Tribunal might intervene and exercise its own discretion in substitute of the original decision maker.<sup>5</sup>
- [15] We have not been persuaded that the learned Senior Member did fall into error in the exercise of discretion as contended for and therefore leave to appeal is refused.

---

<sup>5</sup> *R v King* (1936) 55 CLR 499 at 4500.