

COURT OF APPEAL

**BOWSKILL CJ
MULLINS P
JOHNSTONE J**

**CA No 172 of 2025
SC No 53 of 2013**

THE KING

v

ANDRES, Klaus Julius

Applicant

CAIRNS

WEDNESDAY, 17 JUNE 2026

JUDGMENT

[1] **BOWSKILL CJ:** In December 2013, Mr Andres was convicted, by a jury, of the murder of his wife and, on his plea of guilty, of interfering with her corpse. He was sentenced on 12 December 2013 to the mandatory penalty of life imprisonment for murder and to a concurrent penalty of 18 months’ imprisonment for misconduct with his wife’s corpse. At the time of his sentence, Mr Andres had spent 754 days in presentence custody, from 20 November 2011 to 12 December 2013. The law in force at the time did not permit that time in presentence custody to be declared as time served under the sentence imposed. That is because Mr Andres was also held in custody during that time for other charges, and s 159A(1) of the *Penalties and Sentences Act 1992* then provided that:

“If an offender is sentenced to a term of imprisonment for an offence, any time that the offender was held in custody in relation to proceedings for the offence and for no other reason must be taken to be imprisonment already served under the sentence, unless the sentencing court otherwise orders.”¹

¹ Emphasis added.

- [2] The learned sentencing judge did, however, take the 754 days into account, in combination with the plea of guilty to the misconduct with a corpse offence, by reducing the penalty for that offence from the maximum of two years (which the sentencing judge said he would otherwise have imposed) to a sentence of 18 months' imprisonment.
- [3] Mr Andres appealed against his conviction. That appeal was dismissed on 11 September 2015.
- [4] Mr Andres now applies for leave to appeal against his sentence, to "amend" his sentence by taking into account the 754 days he spent in custody prior to his conviction. The basis of his application is that, some years after his sentence, on 30 June 2016, the other charges were discontinued. Mr Andres wishes to argue that he is now entitled to have that time declared as time served under the sentence imposed on 12 December 2013.
- [5] Mr Andres requires an extension of time to make this application. His explanation for taking as long as he has to make this application is that he is not a lawyer and it took him many years to find out he could make an application; at one time he obtained some help from another prisoner, but that prisoner was released and took Mr Andres' documents with him; and it then took Mr Andres time to find another prisoner to help him. Mr Andres has been assisted at the hearing today by another prisoner, Mr Manning, acting as his *McKenzie* friend.
- [6] In determining whether to grant an extension of time, it is relevant to consider the reasons for the delay and, if the extension were to be granted, whether the proposed appeal has prospects of success.
- [7] Mr Andres' proposed appeal has no prospects of success. This Court's power to intervene in relation to a sentence under s 668E(3) of the *Criminal Code* is not enlivened unless error is established,² on the basis of the facts and the law as they were at the time of the sentence.³ This is made plain by the focus, in s 668E(3), on the sentence that "is warranted in law and should have been passed".⁴

² See *Betts v The Queen* (2016) 258 CLR 420 at [10]; *R v DCQ* [2025] QCA 146 at [41].

³ See *R v Cherry* [2014] QCA 262 at [7]; *R v DCQ* [2025] QCA 146 at [43]-[44], referring to *R v Hughes* [2004] 1 Qd R 541 at [16].

⁴ Emphasis added.

- [8] The fact at the time of Mr Andres' sentence was that he was held in custody for other charges as well as for murder and misconduct with a corpse. The law in force at that time meant that the sentencing judge could not declare that period of presentence custody to be imprisonment already served.
- [9] The law changed in 2020, when s 159A(1) of the *Penalties and Sentences Act* was amended to remove the words "and for no other reason". It remains the fact that, from 20 November 2011 to 12 December 2013, Mr Andres was held in custody for charges other than murder and misconduct with a corpse. What changed, subsequently, is that those other charges were discontinued.
- [10] The subsequent change, in the law and in relation to those other charges, does not serve to demonstrate any error in the sentence which was passed. On the contrary, the sentence imposed on 12 December 2013 was in accordance with the law. This Court cannot hold that some other sentence – relevantly, one which declared the time in presentence custody as time already served – "is warranted in law and should have been passed" because that could not lawfully be done at the time the sentence was imposed.
- [11] Since the proposed appeal could not succeed, there is no utility in granting an extension of time. I would therefore order that the application for an extension of time to apply for leave to appeal against sentence is refused.
- [12] **MULLINS P:** I agree.
- [13] **JOHNSTONE J:** I agree.
- [14] **BOWSKILL CJ:** The order of the Court then, is that the application for an extension of time to apply for leave to appeal against sentence is refused.