

**DEFENCE FORCE DISCIPLINE APPEAL TRIBUNAL**

**Ferdinands v Chief of Army [2001] ADFDAT 2**

**CORPORAL TREVOR KINGSLEY FERDINANDS v CHIEF OF ARMY  
DFDAT 3 OF 2001**

**HEEREY P  
15 AUGUST 2001  
SYDNEY**

**DEFENCE FORCE DISCIPLINE APPEAL TRIBUNAL**

**DFDAT 3 OF 2001**

**BETWEEN:           CORPORAL TREVOR KINGSLEY FERDINANDS  
                          APPLICANT**

**AND:                 CHIEF OF ARMY  
                          RESPONDENT**

**TRIBUNAL:           HEEREY P**

**DATE OF ORDER:    15 AUGUST 2001**

**WHERE MADE:        SYDNEY**

**THE TRIBUNAL ORDERS THAT:**

The application for extension of the period for lodging an appeal against the conviction and sentence by a Defence Force Magistrate on 4 November 1999 is dismissed.

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**PLACE:              SYDNEY**

**REASONS FOR JUDGMENT**

1           The applicant seeks an extension of time for lodging an appeal against his conviction  
by a decision of a Defence Force Magistrate on 4 November 1999. On 27 March 2001 the  
defendant forwarded an unsigned copy of a proposed notice of appeal to the Defence Legal  
Centre Adelaide. This was onforwarded to the Tribunal under cover of a letter dated 11 April  
2001 and received in the Registry of the Tribunal on 17 April 2001.

2           Under s 17(1)(b) of the *Defence Force Discipline Appeals Act 1955* (Cth) I can  
exercise the power of the Tribunal to extend time conferred by s 21(1)(b).

3           The “appropriate period” during which an appeal must be lodged is defined by s 21(2)  
to mean the period of thirty days commencing immediately after:

- “(a) *the day on which the results of a review under section 152 of the  
Defence Force Discipline Act 1982 of the proceedings are notified to  
the convicted person or the prescribed acquitted person; or*
  - (b) *the last day of the period of 30 days after the conviction or prescribed  
acquittal;*
- whichever is the earlier.”*

4           In the present case there was a s 152 review but the last day for lodging an appeal was  
4 January 2000, that being the earlier of the two dates prescribed by s 21(2)(a) and (b).

5           At the time of the offence the applicant was a Corporal in the Adelaide University

Regiment in the Army Reserve. He was also a Constable in the South Australian Police Force. He was charged with two counts of assault on an inferior contrary to s 34(1) of the *Defence Force Discipline Act 1982 (Cth)* (DFD Act). The first count alleged that at the Murray Bridge Range Complex on 15 January 1999 he assaulted Private Suzanne McLaughlin by grabbing her and forcibly pulling her towards him and trying to kiss her. The second count alleged assault on Private McLaughlin on the following day 16 January 1999 by grabbing a plaster strip on the top of her left ear and squeezing it.

6           The trial was held on 25, 26, 27, 28 and 29 October and 1 November 1999 before Colonel N Morcombe DFM. The prosecuting officer was Lieutenant Colonel Hevey and the defending officer Wing Commander McLeod.

7           The applicant's case was that the alleged assaults did not happen. He claimed that he was the victim of a conspiracy and that Private McLaughlin was a party to this conspiracy as a consequence of some sexual relationship she had with a prosecution witness. This was strongly denied by Private McLaughlin. The DFM found Private McLaughlin an honest witness and the applicant "totally unreliable". The DFM convicted the applicant on the second count although as a result of some inconsistencies in the evidence he acquitted the applicant on the first count. The prosecutor submitted that the offence was sufficiently serious to warrant dismissal. The DFM however imposed a sentence of reduction to the rank of Private with effect from 16 January 1999.

8           A legal report dated 20 November 1999 by Colonel L W Roberts-Smith RFD QC under s 154 of the DFD Act dated 30 November 1999 found that no further action was called for.

9           On 5 April 2000 the applicant lodged a petition under s 153 of the DFD Act complaining, amongst other things, of conspiracy and misconduct by all legal officers involved at the trial. On 16 June 2000 the reviewing Judge Advocate Group Captain C F Wall QC recommended that the conviction be confirmed but that the punishment be quashed and the accused resentenced. The reviewing officer found no evidence to support the allegations of conspiracy and misconduct but found there was an error of law in the sentencing in that the DFM took into account the events of 15 January 1999 despite acquitting the applicant of the charges arising out of those events.

10           On 31 August 2000 the reviewing officer (Deputy Chief of Army) advised the applicant of a decision that the conviction would be confirmed, the punishment quashed and a new punishment substituted of forfeiture of seniority at the rank of Corporal with a new seniority date of 26 June 1993. The Deputy Chief of Army also advised that he had appointed an investigating officer under the Defence (Inquiry) Regulations to investigate the appellant's allegations of misconduct by the prosecuting officer, defending officer and chief legal officer at the trial.

11           On 15 February 2001 the investigating officer reported that there was no evidence to support allegations of conspiracy or misconduct.

12           The proposed notice of appeal alleges, amongst other things, that there was a miscarriage of justice or conspiracy to pervert the course of justice by senior Army Legal Corps officers. It is said that the DFM "erred in law by not understanding the appellant's changed mental state", that he did not "alert his mind to joint criminal enterprise" (this being an alleged conspiracy by prosecution witnesses), that he "did not alert his mind to the admissions of the hard evidence against the applicant" and the fact that there "may have been collusion/misconduct between the prosecution and defence teams to process corruption, namely fabrication of evidence and suppression of evidence" and that he erred in law by "not alerting his mind to or allowing a sham DFM trial to take place".

13           By letter dated 29 June 2001 pursuant to my directions the Registrar of the Tribunal advised the applicant that the respondent opposed the granting of an extension on the grounds of length of delay in filing the notice of appeal and lack of any reasonable explanation for that delay together with lack of merit on the grounds of appeal as lodged. The applicant was also advised of my direction that any further affidavits or other written material which he wished to be considered should be filed within fourteen days.

14           The applicant filed a document headed "Extension of Time" which is a lengthy document repeating general allegations of conspiracy, for example "the applicant maintains that there have been a series of acts of harassment over the years whilst the applicant has tried to get on with service life and put the past behind him, however the respondent is hell bent on destroying the applicant with whatever mechanisms available under organisational stress and ability to bring prosecutions against the applicant which he must defend".

15 I have decided that the extension should not be granted. The applicant has not proffered any explanation for the lengthy period of time which has elapsed. The applicant does not assert ignorance of the legal requirement as to time of lodgment. The documents he has submitted include quotations from a number of reported cases and I infer that the applicant has some familiarity with legal matters. He has already invoked procedures under the DFD Act.

16 Further, the proposed appeal is without merit. The original hearing involved a straightforward factual dispute. Questions of credit were central to the case. The careful findings of the DFM do not disclose any arguable defect, as the subsequent enquiries make clear. As to penalty, the Tribunal does not have jurisdiction to interfere.

I certify that the preceding sixteen (16) numbered paragraphs are a true copy of the Reasons for Judgment herein of Heerey P.

Associate:

Dated: 15 August 2001