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LEGAL PRACTICE



Criminal trials before a jury or judge alone

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There are numerous factors that weigh into the issue of whether a criminal prosecution will have a trial by jury or by judge alone. In Queensland, trials in the District and Supreme Courts are generally held in front of a jury, together with a judge. Trials in the Magistrates Court are determined, by the presiding Magistrate, without a jury.

What offences are heard in each court?

The more serious criminal offences in Queensland are dealt with in the Supreme or District Court. This includes charges such as murder or manslaughter, drug trafficking, grievous bodily harm, dangerous driving causing death, and most sexual offences.

Other offences are generally resolved in the Magistrates Court.

All sentences (to applied if found guilty), whether in the Supreme, District or Magistrates Court are decided by a single judge (referred to as the Magistrate, in that jurisdiction).

The role of judge and jury in Supreme or District Court trials

In essence, the role of the judge is to determine issues of law and the role of the jury is to determine issues of fact.

An example of an issue of law is whether an alleged confession by the accused should be excluded from evidence (i.e. ruled inadmissible) because of a failure by police to provide an adequate warning before an interview. This is an issue which would be determined by a judge.

Using the above example, if the judge allowed the evidence to be admissible, the jury would then consider the alleged confession and determine what weight should be given to it. This is an issue of fact. In essence, the jury determines whether that evidence, in conjunction with all other evidence, proves that the defendant committed the alleged offence.

A further example of an issue of fact is whether a witness saw the defendant commit the offence or whether they were mistaken in their identification of the defendant. Again, this would be determined by a jury.

Can I have a judge only trial?

Before the commencement of a trial in the Supreme or District Court, the prosecution or defence may make an application for a “no jury order”.

Such an application is heard in the Court where the trial will ultimately be heard. There is no hard and fast rule whether the application should be in front of the allocated trial judge or not. it is up to the Court to determine this.

The Criminal Code provides that such an order will only be made where it is “in the interests of justice” to do so. It has previously been said that the law presumes that the interests of justice are best served by the inclusion of the community, through the jury, in the trial process.

The available reasons for a court to find that it is in the interests of justice to grant a no jury order is not specified. Each application is considered on a case-by-case basis.

Some more common examples of grounds for a no jury order include:

- The complexity or length of the trial is likely to be too significant a burden for a jury; and
- Significant pre-trial publicity may impact jury deliberations. Examples of this ground being successfully relied upon include:

1. the 2008 Queensland District Court trial of notorious sex offender Dennis Ferguson (you can read about that case here); and
2. the 2020 Western Australia Supreme Court trial of Bradley Edwards – also known as the Claremont Killer (you can read about that case here).

Can a judge overrule a jury’s verdict?

Once the jury returns their verdict, the trial judge has no power to ‘overrule’ their verdict. the jury’s findings of fact are final.

If the defendant is found guilty, they are then sentenced by the trial judge. If they are found not guilty, they are then released.

Whilst it is outside the scope of this article to address it in detail, a defendant that has been found guilty by a jury can lodge an appeal against that verdict on the grounds of ‘unreasonableness’. In short, this means that having regard to all the available evidence, had the Jury carried out its function properly, it could not have arrived at the guilty verdict.

Our firm's recent involvement in 'no jury order' applications

In 2020, two of our lawyers, Callan Lloyd and Eleanor Lynch, represented a client charged with the serious offence of murder. A no jury order was applied for. In simple terms, the grounds were that extreme delay would have been experienced because of the COVID-19 lockdown.

That case, *R v Pentland* now stands as a leading Queensland authority in relation to judge only trials.

The principles which emerge from the decision include the following:

- An application for a no jury order may only be made after the accused has been committed for trial and before the trial begins;
- If the prosecution applies for a no jury order, the court may only make such an order if the accused consents. In contrast, the court may grant a no jury order on application by the accused even if the prosecution does not consent;
- Whether it is in the 'interests of justice' to grant such an order will be determined on the facts that then exist - including, as was the circumstance in the Pentland case, by having regard to the prevailing global COVID-19 pandemic and significant delays which would have been experienced with a jury trial;
- The fact the accused desires a trial by judge alone, whilst relevant, is far from determinative;
- The onus is on the applicant for the order to persuade the court that a no jury order is in the interests of justice;

If a trial judge has been allocated before the no jury application is determined, the Court may only make a no jury order if satisfied that there are "special reasons" – in other words, the test is higher in these circumstances. Special reasons will involve "some factor over and above the interests of justice", but that does not mean the case must be "extremely unusual, uncommon or exceptional".

Is it better to have a trial by jury or judge alone?

There is no 'cookie-cutter' approach to this issue. Like all tactical decisions in criminal matters, whether there is a benefit to a judge alone trial rather than trial by jury will depend upon balancing numerous important considerations.

For this reason, anyone charged with a criminal offence should obtain urgent advice from an experienced criminal practitioner.

This article provides general information on the position for adults charged with criminal offences. There are some distinctions for matters which involve the Childrens Court, the Mental Health Court, and other specialist courts.

Once again, for specific advice, you should contact an experienced criminal lawyer.

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