

PARTIES: THE QUEEN

v

WHITE, MEREDITH

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING
TERRITORY JURISDICTION

FILE NO: 20208995

DELIVERED: 12 December 2006

HEARING DATES: 12 December 2006

JUDGMENT OF: MILDREN J

CATCHWORDS:

STATUTORY INTERPRETATION – suspended sentence subject to conditions made under Juvenile Justice Act – Act repealed and replaced with Youth Justice Act – breach of conditions – no relevant transitional provisions – whether breach can be dealt with under repealed Act – Interpretation Act s 12(c) - whether defendant subject to a “liability” – defendant re-sentenced under repealed Act

CRIMINAL LAW – Sentencing – suspended sentence subject to conditions made under Juvenile Justice Act – Act repealed and replaced with Youth Justice Act – breach of conditions – no relevant transitional provisions – whether breach can be dealt with under repealed Act – Interpretation Act s 12(c) - whether defendant subject to a “liability” – defendant re-sentenced under repealed Act

Legislation:

Acts Interpretation Act (NSW)

Health Act 1875 (UK)

Interpretation Act, s 12, s 12(c)
Juvenile Justice Act, s 53(1)(g), s 53(3), s 53(4)
Youth Justice Act

Citations:

Followed:

Barnes v Eddleston (1876) 1 Ex.D. 102
Byrne v Garrison [1965] VR 523
Ogden Industries Pty Ltd v Lucas (1967) 116 CLR 537

REPRESENTATION:

Counsel:

Plaintiff:	Dr N Rogers
Defendant:	Ms Aicken

Solicitors:

Plaintiff:	Office of the Director of Public Prosecutions
Defendant:	Central Australian Aboriginal Legal Aid Service

Judgment category classification:	B
Judgment ID Number:	mil06391
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

R v White [2006] NTSC 95
No. 20208995

BETWEEN:

THE QUEEN
Plaintiff

AND:

MEREDITH WHITE
Defendant

CORAM: MILDREN J

REMARKS ON SENTENCING

(Delivered 12 December 2006)

- [1] On the 24th of December 2002, Meredith White appeared before Bailey J in this Court in respect of two counts of aggravated robbery committed on 10 June 2002. The robberies were committed in company with one FE when both the offender and FE were 16 years of age. The first of the robberies occurred at a Mobil service station in Alice Springs. The first robbery involved the taking of an amount of \$1,095 from the till and an assault on the console operator. The second robbery occurred a little later in the afternoon and involved the removal of \$25 in cash from the console operator's purse.

- [2] The principal offender was FE. Meredith White's role was to keep watch. Ms White was sentenced to detention for 12 months by Bailey J but the sentence was suspended with effect from the 24th of December 2002 on condition that she place herself under the supervision of a parole officer and obey the directions of that parole officer. Ms White served some 19 days in detention at the time the suspension took effect.
- [3] Subsequently, Ms White failed to comply with any part of that order notwithstanding having been given ample opportunity to carry out her obligations. Those failures amounted to a breach and she came before Riley J on the 28th of June 2005 to be dealt with for the breach. Justice Riley said, after having considered the circumstances:

“The difficulty in circumstances such as yours is to determine how best to deal with you. Thus far, you appear to have either thumbed your nose at the Courts or at least seen fit to ignore the orders made by the Courts. However, at the time the orders were made you were just 16 years of age. Since that time your circumstances have changed significantly. You are no longer a 16 year old child but rather you are a young woman of 19 who has a responsibility for the care of a child aged 13 months.

There is no suggestion that you have been other than a good mother and I am told that you are conscious of the bad example that you have set by conducting yourself in the manner that you have. You acknowledge through Mr Smith that your failure to comply with the orders was, to adopt his expression, “stupid”. On the other hand, there has been no expression of remorse. There has been no clear indication that you now appreciate the seriousness of your conduct at the time of the original offences.”

- [4] His Honour then proceeded to deal with the matter pursuant to s 53(4) of the Juvenile Justice Act. Noting that there were signs that suggested that

Ms White's prospects for rehabilitation are positive, his Honour re-sentenced her pursuant to the provisions of s 53(4) of the Juvenile Justice Act to an aggregate term of imprisonment of 12 months to be suspended after she had served a period of imprisonment of one month. Ms White was placed under the supervision of a parole officer and made subject to conditions as to supervision, reporting, associates, education, work and counselling. His Honour backdated the sentence to the 17th of June 2005 to reflect further time in custody.

- [5] His Honour suspended the balance of the sentence for a period of 12 months.

His Honour concluded:

“The effect of all that, Ms White, as I am sure Mr O'Reilly will explain to you, is that you will have to do a further short period in custody before being released. When you are released it will be under the supervision of a parole officer and you must obey the directions of that parole officer. If you do as you did on the earlier occasion, ignore the parole officer or fail in any way to honour your obligations under the conditional release, then you will be brought back to this Court and the likelihood is that you will spend a period of 11 months in prison.”

- [6] The matter has now been brought back before me because Ms White has breached the order in failing to place herself under the supervision of a probation officer and failing to report to Community Corrections as directed and further that on the 22nd of November 2006 she was convicted of fresh offences committed during the operational period of the order and sentenced to 14 days imprisonment.

- [7] It is apparent from the affidavit of Jocelyn Dhu that subsequent to Ms White's release in 2005 she was given ample opportunity to comply with the orders of Riley J.
- [8] The original application to this Court was made pursuant to s 43 of the Sentencing Act. It is to be noted that Riley J re-sentenced Ms White pursuant to s 53(4) of the Juvenile Justice Act and although his Honour was well aware that he had the power to sentence Ms White under the Sentencing Act, he chose to re-sentence her under the Juvenile Justice Act.
- [9] On the 1st of August 2006, the Juvenile Justice Act was repealed and replaced by the Youth Justice Act. There is a transitional provision which continues orders made by the Juvenile Court under the former Act and which provides that those orders can be reviewed, varied and revoked under the Youth Justice Act as if the order had been made under the latter Act. There is no specific transitional provision dealing with orders made by a Judge of this Court under the Juvenile Justice Act.
- [10] It was submitted by Dr Rogers that nevertheless the provisions of the Youth Justice Act could apply to these proceedings. I am unable to see how that is so. I am unable to find any provision in the Youth Justice Act which has the effect that this Court is able to deal with a breach of an order made under the Juvenile Justice Act by a Judge of this Court in accordance with the provisions of the Youth Justice Act.

[11] In my opinion the position is governed by s 12 of the Interpretation Act. That Act relevantly provides that the repeal of an Act does not affect an obligation or a liability acquired, accrued or incurred under an Act which has been repealed or a remedy in respect of that right, privilege, obligation or liability. There is no doubt that the word “liability” is apt to embrace criminal responsibility as well as civil responsibility, see *Byrne v Garrison* [1965] VR 523 at 528.

[12] In *Barnes v Eddleston* (1876) 1 Ex.D. 102 there had to be considered the meaning of a savings clause in the Health Act 1875 (UK) which was in the same terms as s 12(c) of the Interpretation Act. It was held that the giving, before repeal, of an order prohibiting a nuisance, the disobedience of which carried a penalty, in itself created “a liability” within the meaning of the savings clause. Cleasby B, with whom Grove and Field JJ agreed, said at p 106:

“The respondent was liable to a penalty upon breach of its directions, as is plain from the express words of the Nuisances Removal Act, 1855, s 14; and his position seems to me to be unaffected by the repeal of the statute under which it was made. The counsel for the respondent has contended that “liability” means only exposure to penal consequences for an act done during the existence of the repealed enactments. I cannot agree with this narrow construction; but I may remark that the respondent had committed a breach of the law during the existence of the repealed enactments, and that breach justified the making of the order under which the liability was created.”

[13] In *Ogden Industries Pty Ltd v Lucas* (1967) 116 CLR 537 at 553-554, Barwick CJ considered that word “liability” in the equivalent provision of the Acts Interpretation Act (NSW) was:

“not a mere anticipatory statement of a liability which may be imposed in the future. Indeed, as I have already indicated, to my mind what it creates is not merely a contingent liability. But, even if contrary to my own opinion it should properly be regarded as creating a contingent liability s 7 is not limited in its operation to accrued liabilities in the nature of debts or presently enforceable obligations; contingent liabilities may be included in its sweep.”

[14] For these reasons I consider that an order made by a Judge of this Court exercising his powers under the Juvenile Justice Act may now be enforced, notwithstanding the repeal of the Juvenile Justice Act, as if that Act had not been repealed.

[15] Ms Aicken conceded that Ms White was still not in a position to comply with conditions of the suspended sentence imposed by Riley J. In her submission, Ms White does not have the personal support, family support or resources to comply. She is now 20 years of age with a child aged two and another baby due in May or June. She has a drinking problem of some significance. In the last 12 months she has been in a binge drinking cycle. She comes from Yuendumu and whilst there she is able to stay away from alcohol. However, she has strong connections in Alice Springs where there are a number of siblings who live in one of the town camps. Her siblings are heavy drinkers.

[16] It is now submitted that she has stopped drinking herself about six weeks ago because of “strong words” from her mother and she realises that she must change her ways in order to be a responsible parent to her son. It is put that when she is released from prison she intends to seek assistance from the Central Australian Aboriginal Alcohol Program Unit. It was put on her behalf that the original offending occurred some four years ago and that she has not re-offended in the same manner since. I take this into account. It was put that she is now aged 20 and is somewhat more mature. I see little evidence of this. It was put that time served in an adult prison is more onerous than in a juvenile detention centre. I am not satisfied that this is so.

[17] I am not satisfied that there is any significant long term change in her outlook. During the last six weeks she has spent the period since the 22nd of November in custody in relation to a conviction for driving with a blood alcohol level of 0.243 per cent. Ms White’s failure to comply with Court orders clearly indicate that she is in the grip of alcohol and has not been prepared so far to make any significant effort to change her ways.

[18] It seems to me that when Riley J exercised his powers under s 53(4) of the Juvenile Justice Act he dealt with Ms White pursuant to s 53(1)(g) and s 53(3) of the Juvenile Justice Act and therefore it is open to me to make a further order under s 53(4).

[19] I therefore revoke the order made by Riley J and re-sentence Ms White. Ms White is convicted and sentenced to a term of imprisonment of nine

months. That sentence is backdated to the 22nd of October 2006 to take into account periods of imprisonment and detention already served under the order of Riley J or whilst in detention pending disposition before Bailey J.
