Dube v Rigby [2012] NTCA 7

PARTIES:	**DUBE, Clepperton**
	v
	RIGBY, Kerry Leanne
TITLE OF COURT:	COURT OF APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CIVIL APPEAL FROM THE SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	AP5 of 2012
DELIVERED:	5 November 2012
HEARING DATES:	5 November 2012
JUDGMENT OF:	RILEY CJ, KELLY & BARR JJ
APPEALED FROM:	MILDREN J
	No JA12 of 2012 (21118769)

REPRESENTATION:

Counsel:

Appellant:	In Person
Respondent:	Mr Morters

Solicitors:

Appellant:	In Person
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	Ril1216
Number of pages:	5

IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Dube v Rigby [2012] NTCA 7
No. AP5 of 2012

BETWEEN:

CLEPPERTON DUBE
Appellant

AND:

KERRY LEANNE RIGBY
Respondent

CORAM: RILEY CJ, KELLY & BARR JJ

REASONS FOR JUDGMENT

(Delivered 5 November 2012)
Ex Tempore

The Court:

Introduction

[1] The appellant is self represented before this Court and was self represented in the Supreme Court. At the time of his hearing before the Court of Summary Jurisdiction he was represented by experienced counsel.

[2] On 16 September 2011 the appellant pleaded guilty in the Court of Summary Jurisdiction to two offences of aggravated assault against two women. Submissions were received and the matter then adjourned to 10 October 2011 at which time the learned magistrate found the appellant guilty on each

count, convicted him[1] and sentenced him to an aggregate term of imprisonment of four months. His Honour suspended this sentence at the rising of the court.

[3] On 6 March 2012 the appellant lodged an appeal to the Supreme Court. The appeal was substantially out of time. The grounds of appeal were expressed to be "appeal for Court clemency". The appellant attached an affidavit to the notice of appeal in which he provided his description of the circumstances of the offending, set out his personal circumstances and went on to say that he had acted "on a self defence basis". He said he pleaded guilty "as I wanted to allow the storm to pass". During the hearing of the appeal before a single judge of the Supreme Court it was made relatively clear that the appellant wished to set aside the conviction on the basis that he was not guilty of the offence rather than this being a challenge to the sentence imposed.

[4] The appeal to the Supreme Court was case-managed by a Judge of the Court. The Judge held two preliminary hearings with the appellant at which time his Honour advised the appellant of the need to seek an extension of time within which to appeal and also provided the appellant with advice as to the nature of the appeal and what was required of him. In particular his Honour alerted the appellant to the difficulties in seeking to withdraw a plea of guilty.

[1] His Honour was required to impose a conviction on each count by virtue of section 78BA of the *Sentencing Act*.

[5] The appeal was heard on 13 July 2012. At the conclusion of the hearing his Honour provided a brief summary of the history of the matter. In dismissing the appeal the learned Judge referred to various authorities including *R v Murphy*[2] where it was held that, save in exceptional circumstances, an appellate court will only entertain an appeal against conviction based on a plea of guilty if it appears "(1) that the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it, or (2) that on the admitted facts he could not in law be convicted of the offence charged."

[6] His Honour concluded:

> Certainly on the admitted facts there is nothing to suggest that in law the appellant could not have been convicted of the alleged charge. There is nothing before me to show that the appellant did not appreciate the nature of the charge and certainly it is clear that he intended to admit that he was guilty.

[7] His Honour went on to observe that "the appeal has no merit and is therefore dismissed". His Honour could just as easily have refused the application for an extension of time on the basis that the appeal was without prospects of success.

[8] The appellant has now lodged an appeal to this Court in which he sets out again the matters referred to in the earlier hearing. The orders sought by the appellant are expressed to be:

[2] [1965] VR 187 at 188.

> Uplift of the Conviction. I am a victim of sexual assault. I would not have fought anyone if there was no threat to my life. The attackers triggered me to a higher rank of madness hence I fought harder, they were two attackers versus myself and they were persistent in getting on to my genitals. They broke my belt and tore my shirt. Deliberately shattered my iPhone as I heard Fadzai "we will fix him" as I moved out of the house.

[9] It was submitted before this Court that these issues had been "pushed under the carpet". In fact the issue of defensive conduct was raised and dealt with in the Court of Summary Jurisdiction. By way of example the learned magistrate said in the sentencing remarks:[3]

> The first victim went to grab your groin area and clearly that was something that that person should not have done. The first victim was not in any relationship with you, she had no right to do that and you would have been well within your rights to push her away and even push her away forcefully to take whatever action was reasonably necessary to stop her doing that. It was effectively a sexual assault which was – you were entitled to defend. But your reaction went clearly well beyond that. You immediately started to punch her in the face and head with both of your closed fists.
>
> The second female victim came in between the two of you to try and stop you from continuing to punch victim 1 and because of that you punched her, then turned your attention back to the first female victim and you continued to punch her again with both closed fists causing her to fall to the ground screaming in pain. You then left the residence.

The plea of guilty in the Court of Summary Jurisdiction was on the basis that any action taken in self defence was excessive.

[10] A review of the material makes it clear that the appellant did intend to plead guilty when the matter came before the Court of Summary Jurisdiction on 16 September 2011. He was represented at that time and his counsel made

[3] At AB13.

submissions in his presence in which his guilt was further acknowledged. There was then an adjournment to obtain reports. When the matter returned to court some weeks later on 10 October 2011, the appellant did not seek to change his plea. He continued to be represented by the same counsel and submissions in mitigation were placed before the court. The appellant was then sentenced by the recording of a conviction (as was required by s78BA of the *Sentencing Act*) and the imposition of the suspended sentence.

[11] The appellant's concern with the outcome of the proceedings seems to have been triggered by subsequent events when he lost his employment and had difficulty in obtaining further employment. He attributes the difficulty with obtaining further employment to the conviction recorded against his name.

[12] There was nothing in the material placed before the learned Judge or before this Court to suggest that the plea of guilty made by the appellant was other than voluntary and freely made. The appellant was represented by experienced counsel and it has not been claimed that counsel did not act in accordance with instructions or that counsel provided other than appropriate advice. There was no suggestion that the appellant was misled or that his will was overborne. It is clear that the plea was a deliberate and informed act on the part of the appellant. On the admitted facts the offence was made out. In short there was no miscarriage of justice.

[13] The appeal is dismissed.
