

PARTIES: ANGUS THOMAS  
v  
ROBIN LAURENCE TRENERRY

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: APPEAL from COURT OF SUMMARY JURISDICTION exercising Territory jurisdiction

FILE NO: JA98/98

DELIVERED: 9 April 1999

HEARING DATES: 22 March 1999

JUDGMENT OF: THOMAS J

**CATCHWORDS:**

Appeal – justices – appeal against sentence requiring restitution – unlawful entry, indecent assault, breach of parole – *Justices Act* 1928 (NT).

Criminal law and procedure – sentencing – whether magistrate had power to order restitution – *Sentencing Act* 1995 (NT), s 90(5).

*Justices Act* 1928 (NT), s 177

*Sentencing Act* 1995 (NT), s 90(5)

**REPRESENTATION:**

*Counsel:*

Appellant: M. Jones  
Respondent: A. Fraser

*Solicitors:*

Appellant: North Australian Aboriginal Legal Aid Service  
Respondent: Office of the Director of Public Prosecutions

Judgment category classification: C  
Judgment ID Number: tho99008  
Number of pages: 4

IN SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Thomas v Trenerry* [1999] NTSC 33  
No. JA98/98

BETWEEN:

**ANGUS THOMAS**  
Appellant

AND:

**ROBIN LAURENCE TRENNERY**  
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 9 April 1999)

- [1] This is an appeal from a decision of the chief stipendiary magistrate. The appeal relates to only one aspect of the learned chief stipendiary magistrate's sentencing disposition. This was an order made on 11 November 1998 in the following terms:

"... that the defendant make payment of compensation of \$600 to the Clerk of Courts, to be paid out to Beaurepaire's Parap, within six months of his release from prison for all of the offences for which he's been convicted or resentenced in relation to today."

- [2] Without canvassing all of the reasons put forward by Mr Jones, counsel for the appellant, in support of the appeal, it is sufficient to indicate that Ms Fraser, for the Crown, very fairly conceded that this appeal must be allowed and the order of the learned chief stipendiary magistrate quashed.

- [3] The reasons for this are as follows:
- [4] On 27 August 1998 the appellant entered a plea of guilty to charges of unlawful entry, indecent assault and being in breach of parole.
- [5] In the course of reading the Crown facts to the court, the police prosecutor, Mr Hales, stated the damage to the door, being the property of Beaurepaires, was \$600.
- [6] At the conclusion of reading the Crown facts, the prosecutor advised that the prosecution were not seeking an order for restitution. The submission on this aspect (t/p 5) on 27 August 1998, was as follows:

“HIS WORSHIP: All right, thank you. Well, then I find each of the offences proved. Any application made for restitution?

MR HALES: Your Worship, it’s my view that it’s not appropriate to seek for restitution because, because of certain matters in the defendant’s background, he’s going to be not in a position to earn an income for, I would submit, a substantial period of time. And the making of a restitution order to be paid some years hence would be of little or no value. On that basis, I don’t ask for restitution.

HIS WORSHIP: Well, let’s just reserve it till I hear what else is going to happen.”

- [7] No application for restitution was subsequently made by the prosecutor.
- [8] At the conclusion of proceedings on 27 August 1998, the learned chief stipendiary magistrate adjourned the matter to 8 October 1998 for further submissions and requested a presentence report including a psychological assessment.

[9] The matter was further adjourned to 11 November 1998. On that date the appellant was sentenced to a total effective sentence of eight months imprisonment backdated to 21 August 1998. His Worship also ordered, with the respect to the breach of parole, that the appellant serve an unexpired term of imprisonment that he had not served at the time of his release from gaol. This order was made pursuant to s 64 of the *Sentencing Act*.

[10] In addition his Worship made the order for restitution which is the subject of this appeal.

[11] During the course of submissions on the plea a number of exhibits were tendered. These were record of prior convictions (Exhibit P1), copy of the parole order (Exhibit P2), psychological assessment dated 7 October 1998 (Exhibit P3) and presentence report (Exhibit P4). There was no victim impact statement tendered or any other document which indicated the victim in this matter, namely Beaurepaires, were either seeking or consented to an order for restitution or compensation.

[12] The only submission on this issue before the learned chief stipendiary magistrate was from the police prosecutor, Mr Hales, who specifically declined to seek an order for compensation.

[13] Orders for restitution and compensation can be made under Part 5, Division 1 of the *Sentencing Act* being s 87 to s 97 inclusive.

[14] Section 90 deals with the making of the order and s 90(5) provides as follows:

“(5) A court shall not make an order under this Division where the person whose property was taken, lost, destroyed or damaged does not consent to the order being made.”

[15] The Crown concede that the victim of the offence had not consented to the order being made and consequently the learned chief stipendiary magistrate did not have the power to make an order for restitution.

[16] Accordingly, the appeal is allowed.

[17] Pursuant to s 177 of the *Justices Act* I order that that part of the order made by the learned chief stipendiary magistrate on 11 November 1998 which relates to restitution to be paid by the appellant is quashed.

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