(tho95029)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

SC No. 52 of 1995
(9509319)

BETWEEN:

GLEN CROWSON
Appellant

AND:

LEONARD DAVID PRYCE
Respondent

Coram: THOMAS J

REASONS FOR DECISION

(Delivered 21 December 1995)

This is an appeal by Glen Crowson against a decision of the learned stipendiary magistrate sitting as a Court of Summary Jurisdiction at Alice Springs on 26 September 1995.

Glen Crowson was convicted of the following offences:

1. *Receiving* - sentenced to 2 months imprisonment.

2. *Driving motor vehicle with a concentration of alcohol in excess of 80 mg per 100 ml of blood being a reading of .135* -convicted and sentenced to 3 months imprisonment. He was further disqualified from holding or obtaining a driver's licence for a period of 5 years.

3. *Drive motor vehicle whilst disqualified* - convicted and sentenced to 9 months imprisonment.

The sentences were cumulative, making a total sentence of 14 months imprisonment with a non parole period of 8 months.

The grounds of appeal are set out in Amended Notice of Appeal dated 18 December 1994 and are as follows:

"(a) That the said sentences imposed by the learned Stipendiary Magistrate were in all the circumstances manifestly excessive.

(b) That the learned Stipendiary Magistrate imposed sentences of imprisonment which were not proportional to the objective circumstances of the offences.

(c) That the learned Stipendiary Magistrate erred in not giving full and proper consideration to the sentencing alternative of home detention.

(d) That the learned Stipendiary Magistrate failed to give sufficient weight to the rehabilitation aspect of sentencing.

(e) That the learned Stipendiary Magistrate failed to give sufficient weight to the totality principle."

The majority of the submissions by counsel for the appellant were in respct of the offences of *drive exceed .08* and *drive disqualified* and I propose to deal with those arguments. In respect of the offence of receiving the appellant was sentenced to 2 months imprisonment. The maximum penalty for this offence under the Criminal Code is 7 years imprisonment and usually a maximum of 2 years imprisonment if dealt with in the Court of Summary Jurisdiction. I do not consider any error has been demonstrated on the part of the learned stipendiary magistrate in imposing a sentence of 2 months for the offence of receiving or in making the other sentences cumulative upon the sentence for receiving.

The facts in support of the charges taken from transcript p2 of the proceedings before the learned stipendiary magistrate are as follows:

> ".... about 1 am on Sunday 14 May his year the defendant drove to Little Sisters camp in Alice Springs. On arrival there he met up with four other persons and they sat and drank beer. The defendant was told there at the time the beer he was drinking had previously been stolen from the Tyeweretye Club. A short time later he was given four cartons of that beer which he placed into his motor vehicle. He and the four others then drove along Len Kittle Drive and eventually to the Truck Stop at Alice Springs where he was found by police.
>
> The beer was located in the motor vehicle. He'd obviously been drinking, was given a breath test. The subsequent breath analysis gave a reading of .135. At the station after the breath analysis he was requested to supply his name and gave the name of Nick Cole. It was later ascertained that in fact

his correct name is Glen Crowson. And a check then revealed that in fact he was a disqualified driver, having lost his licence in September '94 for a period of 4 years.

When he was asked why he took the beer he said because he wanted a drink. When asked why he gave a false name he said: 'I was scared because I was going to get arrested'. He knew he was disqualified and shouldn't be driving."

The appellant's record of prior convictions were tendered before the learned stipendiary magistrate. The appellant has the following relevant convictions:

"1. 14/12/1984 Drive exceed .08 reading .190. Fined $300 disqualified 8 months.

2. 23/11/1985 Drive exceed .08 reading .160. Sentenced to 2 months imprisonment suspended on entering a recognisance self in the sum of $400. Disqualified 15 months.

3. 5/10/1987 Drive exceed .08 reading .119. 2 months imprisonment. Disqualified 12 months.

5/10/1987 Drive disqualified. 2 months imprisonment cumulative upon sentences for other offences. Total of 7 months imprisonment released after 2 months on good behaviour bond for 2 years with conditions of supervision and to attend Gordon Symons Centre.

4. 5/1/1989 Drive disqualified 6 months imprisonment.

Drive exceed .08 reading .180. Sentenced 6 months imprisonment concurrent.

5. 17/8/1989 Drive disqualified. Convicted 6 months imprisonment concurrent. Disqualified 2 years.

Drive exceed .08 reading .170 9 months imprisonment to be released after 3 months on a good behaviour bond with conditions of supervision and to attend Gordon Symons Centre. Disqualified 3 years.

6. 29/7/1992 Drive disqualified. 80 hours community service order.

Drive under the influence. 40 hours community service order.

7. 14/7/1994 Exceed .08 with a reading .166. 2 months imprisonment. Disqualified 3 years.

8. 8/9/1994 Exceed .08 reading .188. 3 months imprisonment disqualified 4 years."

In addition the appellant has numerous convictions for offences of dishonesty and assault between 1981 and 1994.

Mr Crowson was admitted into the Foundation on Rehabilitation with Aboriginal Alcohol Related Difficulties (FORWAARD) to undertake the alcohol treatment program on 7 July 1995 as a condition of his bail and completed the program on 25 September 1995. A letter from the program manager at FORWAARD was tendered and marked Exhibit P2 before the learned stipendiary magistrate. The letter states inter alia:

> "During this period he obeyed all staff directions and participated in group therapy sessions and recreational activities without hesitation.
>
> I believe our program was educational and beneficial to Glen and with the knowledge he has gained at FORWAARD, should have the tools to address his alcoholism and rectify his lifestyle."

The submission on behalf of the appellant is that the gravity of the offences did not warrant the sentence that was imposed.

I apply the principle expressed by Murphy J in *Freeman v Harris* (1980) VR 267 at 281:

> "In sentencing the punishment in the particular case should be proportionate to the offence. .... The gravity of the offence must be the first and paramount consideration."

In his remarks on sentence the learned stipendiary magistrate stated at p7:

> ".... I've had regard to the document exhibit P2 from FORWAARD where you have obeyed all activities and participated in therapy. And have the tools to address your alcoholism and rectify your lifestyle. One hopes that that is the case. The community deserves protection."

and at p8:

> "I've had regard to the possibility of rehabilitation. As I say I've had regard to the document forwarded by the organisation known as FORWAARD. In all the circumstances I can see other option to this court for the benefit of the community and for the deterrent factors, both personal and

> general, you are to be sentenced to terms of imprisonment. Hopefully they'll be terms which will discourage you from such behaviour in the past. And if you so desire to proceed with rehabilitation when you're released that's a matter for you. I'd consider it very seriously if you want to avoid being in this position again."

Counsel for the defence submitted that the learned stipendiary magistrate failed to give sufficient weight to the aspect of rehabilitation (ground (d) in the Notice of Appeal) and in particular that at the time the defendant came before the Court for sentence he had satisfactorily completed a 2½ month rehabilitation program at FORWAARD and then immediately after completing the course, travelled to Darwin to face sentence for the offence.

On the aspect of rehabilitation, I agree with respect with the observations of Mildren J in *Q v Lewfatt* (1993) 66 A Crim R 451 at 46:

> ".... If one of the main purposes of punishment is to protect society, society's interests are best served by a sentencing disposition which promotes the rehabilitation of the prisoner, rather than a disposition which may have the opposite effect."

Mr Crowson is to be given credit for the efforts he made in attending the rehabilitation course at FORWAARD. From his sentencing remarks the learned stipendiary magistrate clearly took this factor into account.

I am not persuaded the learned stipendiary magistrate failed to give sufficient weight to the rehabilitation aspects of sentencing.

The learned stipendiary magistrate took into account the relevant prior convictions of the accused as he was entitled to do (*Veen (No. 2)* (1988) 164 CLR 265 at 447-478). This is quite an appalling record of offences for drink driving. This offence is Mr Crowson's 9th conviction for a drink driving offence within a period of a little over 10 years and his 5th conviction for *drive disqualified*. The learned stipendiary magistrate referred to the

danger Mr Crowson presents to the community and his complete disregard for the sanction the Courts have imposed.

The maximum penalty for these offences of *drive exceed .08* and *drive disqualified*, is a maximum of 12 months on each charge. A total maximum of 2 years imprisonment. In respect of both offences, he was sentenced by the learned stipendiary magistrate to a total of 12 months imprisonment which is half of the maximum sentence which could have been imposed.

I am not persuaded the learned stipendiary magistrate failed to have regard to the principle of totality. Accordingly, ground (e) of the Notice of Appeal is dismissed.

It was submitted by counsel for the appellant that the learned stipendiary magistrate failed to heed the submission made on behalf of Mr Crowson to consider the option of a home detention order at a rehabilitation centre. I agree that was within the sentencing magistrate's discretion as an option and I am well aware is frequently a sentencing disposition appropriately imposed for this type of offence.

Before imposing a home detention order it would have been necessary for the learned stipendiary magistrate to request an assessment from the Department of Correctional Services in respect of any proposed home detention order (s19B *Criminal Law (Conditional Release of Offenders) Act*). Clearly the learned stipendiary magistrate exercised his discretion against such an option and did not call for a home detention assessment but imposed a sentence of imprisonment. I do not consider the appellant has shown the learned stipendiary magistrate has proceeded on a wrong principle or demonstrated an error by exercising his discretion to impose sentences of imprisonment rather than call for a report as to the suitability of home detention. Ground (e) of the Notice of Appeal is dismissed.

In respect of ground of appeal (b) that the learned stipendiary magistrate imposed sentences of imprisonment which were not proportional to the objective circumstances of the offence, I would

agree that a sentence of 12 months imprisonment for the offences of *drive exceed .08* with a reading of .135 and *drive disqualified*, both arising from the same act of driving, is in the higher range of sentences for these offences. However, the principle applicable to appeals against sentence are well established: *Salmon v Chute & Another* 94 NTR 1 at 24; *Raggett, Douglas & Miller v R* 50 A Crim R 41 at 42; *R v Anzac* (1987) 50 NR 6 at 11-12; *R v Tait* (1979) 24 ALR 473 at 476. It is not for this Court to interfere with the sentence imposed merely because the Court would have imposed a less or different sentence. It interferes only if it is shown the sentencing magistrate was in error in acting on a wrong principle or in misunderstanding or in wrongly assessing some salient feature of the evidence.

I apply the general principles applicable to appeals against sentence as expressed by Kearney J in *Salmon v Chute* 94 NT 1 at 24:

> "See also *R v Anzac* (1987) 50 NTR 6 at 11-12.
> In *R v Tait* (1979) 24 ALR 473 at 476; 46 FLR 386 at 388, the Full Court of the Federal Court, citing from *Cranssen v R* (1936) 55 CLR 509 at 519, set out the fundamental rule on appeals against sentence as follows:
>
> > 'The jurisdiction to revise such a discretion must be exercised in accordance with recognised principles. It is not enough that the members of the court would themselves have imposed a less or different sentence, or that they think the sentence over-severe ...'
> > ...
> > An appellate court does not interfere with the sentence imposed merely because it is of the view that that sentence is insufficient or excessive. *It interferes only if it be shown that the sentencing judge was in error in acting on a wrong principle or in misunderstanding or in wrongly assessing some salient feature of the evidence.* The error may appear in what the sentencing judge said in the proceedings, or the sentence itself may be so excessive or inadequate as to manifest such error ... [emphasis added]."

In my opinion, the appellant has not demonstrated any such error and ground (b) of the Notice of Appeal is dismissed.

In respect of ground (a), that the sentences imposed by the learned stipendiary magistrate were in all the circumstances manifestly excessive, I have already referred to the principles applicable to appeals against sentence. For the reasons already documented I am not persuaded that the sentences imposed were, in all the circumstances, manifestly excessive.

Accordingly, the appeal is dismissed.