

CITATION: *Jenkins v Firth* [2017] NTSC 52

PARTIES: JENKINS, Trevor

v

FIRTH, Justin

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: APPEAL from LOCAL COURT exercising
Territory jurisdiction

FILE NO: LCA 28 of 2016 (21556341)

DELIVERED ON: 20 July 2017

DELIVERED AT: Darwin

HEARING DATE: 11 July 2017

JUDGMENT OF: Grant CJ

CATCHWORDS:

Notice of Appeal does not disclose the nature and grounds of the appeal – appeal is not brought from a “conviction, order, or adjudication” of the Local Court – appeal incompetent – dismissed summarily.

Local Court (Criminal Procedure) Act (NT), s 163, s 171, s 172

Step v Atkins [2008] NTCA 5, applied.

REPRESENTATION:

Counsel:

Appellant:	Self-represented
Respondent:	W J Karczewski QC, Director of Public Prosecutions

Solicitors:

Appellant:	Self-represented
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	GRA1706
Number of pages:	9

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

Jenkins v Firth [2017] NTSC 52
No. 21556341

BETWEEN:

TREVOR JENKINS
Appellant

AND:

JUSTIN FIRTH
Respondent

CORAM: GRANT CJ

REASONS FOR JUDGMENT

(Delivered 14 July 2017)

- [1] By information laid on 7 December 2015 the appellant was charged with unlawfully assaulting Roy O’Neill contrary to s 188(1) of the *Criminal Code* (NT).
- [2] By complaint made on 7 December 2015 the appellant was charged with the following offences:
- trespassing on premises, namely St Paul’s Church, contrary to s 5 of the *Trespass Act* (NT); and
 - behaving in a disorderly manner in a public place, namely St Paul’s Church, contrary to s 47(a) of the *Summary Offences Act* (NT).

[3] By complaint made on 10 February 2016 the appellant was charged with the following offences:

- unlawfully assaulting Roy O’Neill contrary to s 188(1) of the *Criminal Code*;
- trespassing on premises, namely St Paul’s Church, after being directed to leave the place by the occupier, namely Roy O’Neill, contrary to s 7(1) of the *Trespass Act*; and
- unreasonably causing substantial annoyance to another person, namely Roy O’Neill, contrary to s 47(e) of the *Summary Offences Act*.

[4] The respondent to this appeal is a Senior Constable of Police who was the informant in all three of those processes.

[5] The matter was constituted as proceedings No 21556341 and brought on for mention before the Court of Summary Jurisdiction on 19 February 2016, together with proceedings No 21604674. The second matter was a private prosecution for assault brought by the appellant against Roy O’Neill. The two matters would appear to have been running together in the preliminary stages as they were related in time and circumstance. That relationship was described by the appellant during the course of the mention on 19 February 2016 in the following terms:

MR JENKINS: I went to – I went to do an RCIA course with a Catholic priest, I pushed past him, and now he’s charging me with assault. So I charged him with assault.

[6] The information and complaints described above indicate that the incident in question took place on 14 September 2015. The appellant’s account given during the course of the mention suggests that on that day he attended at St Paul’s Church for the purpose of undertaking some form of course, he entered the premises in the face of some objection from a priest (presumably the Roy O’Neill named in the information and complaints), and he was subsequently charged by police with assault as a result of that incident (presumably after police had been called to attend). In addition to the assault charge the appellant was subject to the various trespass and disorderly conduct charges that are described above. In response to the issue of process charging him with assault, the appellant commenced a private prosecution against the complainant for assault.

[7] During the course of the mention on 19 February 2016 the summary prosecutor served the appellant with a notice advising that the Director of Public Prosecutions was taking over conduct of the private prosecution that had been commenced by the appellant against Roy O’Neill. That notice was presumably given in the exercise of the Director’s power under s 13 of the *Director of Public Prosecutions Act* (NT) to take over and conduct any proceedings in respect of a summary

offence. The exercise of that power in these circumstances and for that purpose is unsurprising.

[8] During the course of that mention the magistrate made no dispositive orders and simply adjourned both matters for a further directions hearing at 2:00 pm on 4 March 2017. Those orders were accompanied by the following exchange:

HIS HONOUR: I'm going to adjourn the directions hearing to 4 March at 2pm. You can try and speak to the DPP in the meantime, for notice to appear. And I'll do the same with the other one.

MR JENKINS: What's the number for my case?

HIS HONOUR: 21556341.

MR JENKINS: They're both 6341. What's the O'Neill case?

HIS HONOUR: No. O'Neill case is 4674 – 21604674.

MR JENKINS: So, is [the DPP] intending to drop that, or they're going to actually prosecute?

HIS HONOUR: I don't know, I haven't spoken to him. All I know is what [the summary prosecutor has] just told me.

MR JENKINS: Okay, thank you.

HIS HONOUR: [The DPP is] entitled under his Act to take over any prosecution.

MR JENKINS: Yeah, that's fine. Is that it?

HIS HONOUR: That's it.

MR JENKINS. Okay. Good luck, it's full of shit, isn't it?

HIS HONOUR: Yes, but it's clearing as we speak, Mr Jenkins.

[9] Conduct of the case management processes for both matters were subsequently assumed by various magistrates (and subsequently judges of the Local Court).

[10] On 11 November 2016 the appellant filed a Notice of Appeal which appears to be dated 8 November 2016. That notice was in standard Form 63. The appeal was purportedly brought pursuant to ss 171 and 172 of the *Local Court (Criminal Procedure) Act* (NT). Section 172 requires relevantly that the notice of appeal shall state the nature and grounds of the appeal.

[11] The standard Form 63 filed in this matter contains various handwritten notations and has attached to it a further single page of handwriting. As best as can be discerned, those handwritten notations disclose:

- the appeal is brought against some adjudication made on 10 June in an unspecified year (presumably 2016); and
- the adjudication was made by Judge Carey.

[12] The handwritten notations are otherwise largely indecipherable, and do not disclose the nature and grounds of the appeal in any way that is remotely comprehensible or known to the law. When asked to explain the grounds for the appeal the appellant asserted that Judge Carey had “changed the case from a notice to appear to a bail matter”. That explanation does not clarify matters.

[13] A number of further observations need be made concerning the proceedings before the Court of Summary Jurisdiction (and subsequently the Local Court). Proceedings No 21556341 did not come before the court on 10 June 2016, or on that day in any other year. The matter came on for mention on 9 June 2016 before a judge other than Judge Carey. At that time, two of the counts were set aside, the appellant indicated he would be entering a plea of not guilty in relation to the four remaining counts, and the matter was adjourned to 9:45 am on 31 August 2016. The matter has yet to be determined.

[14] The hearing of the remaining charges commenced on 15 December 2016. That hearing did not conclude on the day, and it was adjourned part heard to 13 March 2017. At the resumption date on 13 March 2017 the appellant did not appear and the Local Court issued a warrant for his apprehension. On 14 March 2017, the appellante surrendered, he was granted bail, and the matter was adjourned to 9 May 2017 for the continuation of the hearing. The appellant was subsequently taken into custody for unrelated matters, and on 28 April 2017 the hearing date of 9 May 2017 was vacated and the hearing was adjourned to 13 July 2017. The appellant is now in custody for different and unrelated matters, and the continuation date of 13 July 2017 was presumably also vacated.

[15] As matters presently stand, the charges against the appellant constituted as proceedings No 21556341 have yet to be resolved.

Section 163 of the *Local Court (Criminal Procedure) Act* provides relevantly that a party to proceedings before the Local Court may appeal to this Court from a “conviction, order, or adjudication” of the Local Court on a ground which involves sentence or an error or mistake on the part of the Local Court. The operation of that provision was considered by the Northern Territory Court of Appeal in *Step v Atkins* [2008] NTCA 5 (at a time before the *Justices Act* was renamed). Thomas JA (with whom Martin (BR) CJ and Southwood J concurred), made the following observations in that matter:

[26] The provisions of s 163 have been considered by the Supreme Court of the Northern Territory in the matter of *Macey v Cooper* (1999) 150 FLR 476 and *Tcherna v Garner* (1999) 154 FLR 243.

[27] I am aware that s 163 of the *Justices Act* has been amended since those decisions were delivered. However, the amendments are not relevant for present purposes being the additions of paragraphs 3, 4, 5 and 6 of s 163.

[28] In both decisions of the Supreme Court of the Northern Territory referred to above, reliance was placed upon a number of cases determined in the Supreme Court of South Australia considering the same provision in the South Australian *Justices Act*.

[29] The appeal to the Supreme Court and ultimately to this Court, is from a decision of the learned stipendiary magistrate which was an “interlocutory order”. It was not an appeal from a conviction order or adjudication of the Court.

[30] In *Macey v Cooper* (supra), Martin CJ at paragraph 12 stated:

“As to her Worship's declining to proceed to hear and determine the matter of the complaint, I am of the view that it does not give rise to a right of appeal under s163 of the *Justices Act* (NT). That provision is taken from s163 of the *Justices Act*, South Australia, and it has long

been held in that Court that the right of appeal only lies from an order determining the subject matter of the complaint, that is, from a final and not from an interlocutory order. The South Australian authorities go back to a review of the history of the appeal provisions undertaken by Poole J in *Stuart v Allchurch* (1923) SASR 333 and progress through *The Queen v O'Loughlin; ex parte Ralphs* (1971) 1 SASR 219; *Gray v Steele* (1973) 4 SASR 291; *Daddow v French* (1975) 12 SASR 440 and *Dubois v Lovegrove* (1987) 45 SASR 309. Reference might also be made to *Commissioner of Police v Bradey* (1954) SASR 314. I see no good reason to depart from that long line of authority upon legislation emanating from that State and which is indistinguishable for present purposes.”

[31] In the matter of *Tcherna v Garner* (supra), reference was made at paragraphs 32 and 33 to two of the decisions of the Supreme Court of South Australia as follows:

“[32] In the matter of *Stuart v Allchurch* [1923] SASR 333 Poole J held that a refusal to dismiss a complaint but rather to adjourn the complaint for rehearing was not a conviction, adjudication or order within the provisions of s163 of the *Justices Act* and stated at p 338: “It appears to me that the Legislature intended to use the term ‘order or adjudication’ in the sense in which it had been previously used in similar legislation, and that it covers orders which decide the substantive rights of the parties, and not orders deciding matters of procedure which are merely incidental.”

[33] In the matter of *Dubois v Lovegrove* (1987) 45 SASR 309 Cox J stated at p 310: “I raised at the outset this morning the question of the competence of this appeal. Section 163 of the *Justices Act* 1921 gives an aggrieved party a right of appeal to the Supreme Court against ‘every conviction, order and adjudication of a court of summary jurisdiction (including an order dismissing a charge of a simple offence or a minor indictable offence)’. It has been held consistently by this Court for more than sixty years that the right of appeal under s 163 against an order or adjudication is restricted to a final order or adjudication: see *Stuart v Allchurch* [1923] SASR

333. There can be no appeal against a mere interlocutory decision.”

[32] The rationale for this provision in s 163 is that a defendant in criminal proceedings should not be allowed to disrupt the ultimate disposition of the 11 criminal charges by challenging interlocutory orders prior to a conviction order or adjudication of the Court. The defendant has a right to appeal following upon any such conviction, order or adjudication.

[16] The Notice of Appeal in this case does not disclose the nature and grounds of the appeal, and the appeal is not brought to this Court from a “conviction, order, or adjudication” of the Local Court in the relevant sense. For those reasons, the appeal is incompetent and I order that it be dismissed summarily.
