Amagula v Chambers [2007] NTSC 59

PARTIES:	AMAGULA, LOGAN
	v
	CHAMBERS, KIM
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	JA28/07 (20631109, 20631110, 20713501)
DELIVERED:	9 November 2007
HEARING DATES:	27 September 2007
JUDGMENT OF:	OLSSON AJ
ON APPEAL:	Sentence imposed by Court of Summary Jurisdiction on 16 May 2007

CATCHWORDS:

Justices Appeal -- Appeal against sentences -- Appellant involved in a series of offences, mostly of a serious nature, as a member of a group seeking to exact payback retribution -- Serious and sustained offending involving substantial property damage -- Offences committed whilst on bail -- Whether learned magistrate erred as to his approach to the sequence of events -- Whether insufficient weight given to the appellant's relatively young age, lack of prior convictions, personal mitigatory factors and rehabilitation -- Whether learned magistrate erred by failing to consider gaol as a sentence of last resort and in not suspending sentences forthwith -- Whether parity principles not observed -- Whether sentences manifestly excessive -- Appeals dismissed.

REPRESENTATION:

Counsel:

Appellant:	C McGorey
Respondent:	G McMaster

Solicitors:

Appellant:	Northern Australian Aboriginal Justice Agency
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	tho200706
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Amagula v Chambers [2007] NTSC 59
No. JA28/07 (20631109, 20631110, 20713501)

BETWEEN:

AMAGULA, LOGAN
Appellant

AND:

CHAMBERS, KIM
Respondent

CORAM: OLSSON AJ

REASONS FOR JUDGMENT

(Delivered 9 November 2007)

Introduction

[1] These reasons are intended to be read in conjunction with the reasons published by me today in the matter of *Ezekiel Mamarika v Murphy and Chambers* [2007] NTSC 58 ("the *Mamarika* reasons"). They relate to an appeal against the severity of the aggregate of sentences imposed on the appellant Logan Amagula in respect of offences admitted by him in the course of the general sequence of events described by me in the *Mamarika* reasons.

[2] On File 20631109 the appellant pleaded guilty to five charges, namely that, on 4 December 2006 at Emerald River:

(1) he unlawfully used a Toyota LandCruiser, which unlawful use involved the circumstance of aggravation that the vehicle was damaged, necessitating repairs at a cost of $5,000;

(2) he unlawfully damaged a Toyota Troop Carrier to the value of $2500;

(3) he unlawfully damaged a Toyota 80 Series vehicle to the value of $2500;

(4) he unlawfully damaged a Toyota LandCruiser to the value of $270; and that

(5) he did, without lawful excuse, carry and use an offensive weapon, namely a wooden pole.

[3] Those pleas were entered in relation to assertions that the appellant had been one of the group involved in the Emerald River outstation raid and had personally taken an active part in damaging the vehicles referred to. He received a sentence of three months imprisonment in respect of the first charge and an aggregate sentence of six months imprisonment for the other four offences, backdated to commence on 17 May 2007.

[4] In imposing that sentence the learned magistrate commented "*It's not exactly what Ezekiel got, but it gets to the same result*". On reading the relevant transcript it is apparent that the learned magistrate was minded to impose the same aggregate sentence on this appellant as was imposed on the co-

appellant, Ezekiel Mamarika, but simply adjusted individual sentences and their concurrency between the various offences to achieve that result.

[5] On File 20631110 the appellant pleaded guilty to a charge that, on 4 December 2006 at Angurugu, he unlawfully damaged stereo speakers and an amplifier to the value of $1599.

[6] This plea reflected an admission that the appellant had been an active participant in the incident that occurred on the veranda of the home of Jason Untunga shortly prior to the group raid on Emerald River.

[7] Like Ezekiel Mamarika, this appellant received a sentence of two months imprisonment in respect of the offence. The learned magistrate ordered that the sentence be served concurrently with that imposed on File 20631109.

[8] On file 20713501 the appellant pleaded guilty to two charges, namely that, on 21 April 2007 at Umbakumba, he:

(1) unlawfully damaged a Toyota LandCruiser to the value of $3000; and that

(2) did, without lawful excuse, possess, carry and use a controlled weapon, namely a machete.

[9] Those charges reflected the appellant's participation in the sortie by several co-offenders to the Umbakumba community, also described in the *Mamarika* reasons. The learned magistrate sentenced the appellant to an aggregate of

three months imprisonment in respect of those offences, to be served concurrently with the aggregate sentence on File 20631109.

[10] The practical effect of all sentences imposed on the appellant was a total aggregate of six months imprisonment to be served with effect from 17 May 2007, which the learned magistrate suspended after service of six weeks, with an operative period of two years. This appellant had already served 19 days in custody and was therefore called upon to serve a further 23 days before being eligible for release.

Grounds of appeal

[11] By his amended notice of appeal the appellant complains that:

(1) the sentences imposed were manifestly excessive;

(2) the learned stipendiary magistrate erred in the approach to the sequence of the offences committed;

(3) the learned stipendiary magistrate erred in failing to give sufficient weight to the appellant's personal mitigatory factors and rehabilitation;

(4) the learned magistrate erred by failing to properly consider gaol as a sentence of last resort and whether to suspend the sentences forthwith; and

(5) the learned stipendiary magistrate erred in not properly applying the principle of parity.

Issues arising on the appeal

[12] The learned magistrate was told that the appellant was 21 years of age and had no prior convictions as an adult. He had only been dealt with by way of juvenile diversion in the past. Like Ezekiel Mamarika he was on bail for his part in the 12 August 2006 liquor offences at the time of the Emerald River raid.

[13] In the course of submissions, the learned magistrate pointed out that, whilst the appellant was entitled to some allowance for an early plea, he had failed to appear on an earlier occasion and the plea could not be said to have been entered at the earliest possible time.

[14] It is fair to say that the pleas in mitigation for this appellant substantially mirrored those related to Ezekiel Mamarika, given that, on the occasion of the Umbakumba incident, he admitted not only to being party to damaging the relevant vehicle but also to unlawfully carrying a controlled weapon, namely a machete.

[15] Considerable emphasis was placed by counsel for the appellant on the fact that it was said that all incidents were in the nature of payback that had been provoked by earlier conduct on the part of members of the Untunga clan directed against a family member -- conduct which, as the learned magistrate noted -- had neither been directly observed by nor had directly affected the appellant.

[16] It was argued on behalf of the appellant that, bearing in mind his lack of prior convictions and the time that he had spent on remand in custody, the primary thrust of any sentence ought to be towards his rehabilitation and that further time in custody was not warranted.

[17] In proceeding to sentence the appellant and another offender, the learned magistrate commented:

> "Now, a group of adult offenders, some older than others and some with records of violence and illegality, for reasons to do with clan rivalry and outbreak of hostilities between clans on Groote Eylandt have travelled out to a remote outstation called Emerald River where mostly young people and older people resided, taken various weapons and caused the people there to flee into the bush and then proceeded to trash what they could. They deliberately drove out there and they drove out there with violence and mayhem on their mind and they achieved just that. Then they drove back and went to a house at Umbakumba, threatening violence -- luckily it was empty -- and trashed the stereo."

[As I have noted in the *Mamarika* reasons, the learned magistrate clearly misunderstood the relevant sequence of events in that regard, no doubt due to the order in which the files had been put before him. The stereo incident in fact immediately preceded the Emerald River raid. It did not follow it. However, I adhere to what I said in the *Mamarika* reasons concerning that situation.]

[18] Having referred to other conduct of another offender, he then continued:

> "This kind of behaviour if I had heard about it in the fifties or forties is one thing, but the courts have been sitting out there for 30 or 40 years, once a week. The rule of law is entrenched there. Indeed, the

> aboriginal victims were the first to call police and try and get it to stop. This was mayhem and anarchy on a significant scale.
>
> Yes, I know that at one stage some of today's -- relatives of today's defendants -- were stopped by spear carrying men from the other clan and threatened, but that's just another indication of the need to send out a strong message of deterrence to men on that island that acting in this way, violently, is unacceptable and it won't be tolerated by the courts. And as I have said, I am surprised that Jackson… [Bara]… only got six months for it, even on a plea of guilty. Mind you, apparently he was serving other sentences."

[19] Having so commented he then directed specific attention to the appellant, saying:

> "…… if I thought I was right with Ezekiel then …… Logan should get the same sentence, six-months suspended after six weeks. He, of course, was on bail for an August offending and committed further offences whilst on bail and warrants were out for his arrest.
>
> It is unusual to send first offenders, especially youthful first offenders, to gaol but it does happen from time to time when offences just become so serious that even people like Logan and Ezekiel need, in terms of sending messages to them and to like-minded youths, some service of incarceration.
>
> So I have regard to all that was urged upon me by Mr O'Brien-Hartcher with his eloquence and with his hard work. I especially have regard to the youth of his client and his lack of prior offending and all the other principles and guidelines set out in the Sentencing Act.
>
> But, in my view what happened on 4 December was too serious at the end of the day for me not to entertain and, indeed, pass a sentence of actual incarceration and I [sic] so as follows ……"

[20] He then imposed the sentences that are the subject of the appeal.

Conclusion

[21] In so far as the issues raised apropos this appellant mirror those pertaining to Ezekiel Mamarika, I adhere to what I have said in my judgment relating to the latter as also being appropriate to the present appeal. In so saying, I make the point that the offending of the present appellant was actually slightly more extensive than that of Ezekiel Mamarika. He pleaded to an additional offence in relation to the Umbakumba incident.

[22] By way of summary, I am unable to conclude that, in all the circumstances, the sentences imposed (either individually or in aggregate) are manifestly excessive or that the factual misunderstanding on the part of the learned magistrate necessarily impugned his reasoning.

[23] The key features of the circumstances with which the learned magistrate was confronted were that, over a significant period, the appellant participated in multiple, very serious offences that were committed in an environment that carried with it the strong potential also for serious physical incidents involving local residents. Moreover, what occurred was a gratuitous payback scenario when the appellant had not even been involved in the perceived wrong done to his clan member.

[24] The damage occasioned to the vehicles was considerable and the offending behaviour occurred whilst the appellant was on bail, and, in the latter stages, whilst the warrant for his arrest for failing to appear was extant. I infer that the eventual remand in custody simply reflected his failure to observe bail

conditions, coupled with the apparent continuing pattern of serious offending by the appellant.

[25] For the reasons expressed by me in the *Mamarika* reasons I do not consider that the learned magistrate breached the parity principle in aggregate, when all relevant comparative features are properly taken into account. In so saying I am constrained to comment that I do have difficulty in understanding the logic of imposing the differential head sentences to which I have referred in respect of relevant Emerald River offences, as between this appellant and Ezekiel Mamarika. However, given the obviously appropriate desire of the learned magistrate to arrive, in one manner or another, at a common aggregate situation as between the two offenders, there would appear to be little utility in seeking to fine tune the internal, offence by offence, dissection of sentences.

[26] At the end of the day, it cannot be said that the aggregate of the sentences imposed was disproportionate to the objective criminality involved, despite due allowance for the mitigating circumstances personal to the appellant.

[27] This appeal must also be dismissed.