Grigor v Rigby & Anor [2007] NTSC 64

PARTIES:	GRIGOR, JAMES ANTHONY v RIGBY, KERRY LEANNE AND THE MAGISTRATES OF THE COURT OF SUMMARY JURISDICTION
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	No 114 of 2007 (20729333)
DELIVERED:	14 November 2007
HEARING DATES:	1 November 2007
JUDGMENT OF:	MILDREN J

CATCHWORDS:

CRIMINAL LAW – stay of proceedings – hearing of information no commenced within time – whether court can extend time – Sexual Offences (Evidence and Procedure) Act – whether accused deprived of opportunity to have matter dealt with on complaint due to delay in brining proceedings – application refused

Statutes:
Criminal Code, s 132(2)(b)
Justice Act, s 52
Sexual Offences (Evidence and Procedure) Act, s 3A
Summary Offences Act, s 47

References:
Minister's Second Reading Speech, Hansard, Debates, 18 August 2004

Citations:
Followed:
Montreal Street Railway Co v Normandin [1917] AC 170

Referred to:
Accident Compensation Commission v Murphy [1988] VR 444
Ex parte Tasker, Re Hannon & Ors (1971) 1 NSWLR 804
R v Eldridge (2005) 16 NTLR 112
R v Urbanowski [1976] 1 WLR 455
Williams v Spautz (1992) 174 CLR 509

REPRESENTATION:

Counsel:

Plaintiff:	S Lee
Defendant:	K Sharafeldin

Solicitors:

Plaintiff:	Self
Defendant:	Office of the Director of Public Prosecutions

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Grigor v Rigby & Anor [2007] NTSC 64
No. 114 of 2007 (20729333)

BETWEEN:

JAMES ANTHONY GRIGOR
Plaintiff

AND:

KERRY LEANNE RIGBY
First Defendant

AND

THE MAGISTRATES OF THE COURT OF SUMMARY JURISDICTION
Second Defendants

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered 14 November 2007)

[1] On 15 February 2007, the defendant Sergeant Rigby of the Northern Territory Police laid an information under the Justices Act against the plaintiff for an alleged breach of s 132(2)(b) of the Criminal Code. That subsection provides that "any person who exposes a child under the age of 16 years to an indecent act by the offender or any other person is guilty of a crime and is liable to imprisonment for 10 years".

[2] The case sought to be brought against the plaintiff alleges that the plaintiff on 15 July 2006, whilst in a cinema deliberately exposed his penis and masturbated himself in the presence of two female children under the age of 16. The plaintiff brought a motion in this Court to permanently stay the proceedings in the Court of Summary Jurisdiction. After hearing submissions I refused to grant the stay and dismissed the motion. I gave short reasons for my decision and said that I would publish full reasons at a later time. These are those reasons.

[3] The plaintiff's first argument was that, the prosecution, by not instituting proceedings until 15 February 2007, deprived itself of the opportunity of laying a lesser charge under s 47 of the Summary Offences Act, which, it was submitted, was the appropriate charge. That section provides that it is an offence for any person to be guilty of offensive or indecent behaviour in a public place, punishable by a fine of $2,000 or imprisonment for six months, or both. An offence against s 47 is to be presented upon complaint in the Court of Summary Jurisdiction and is not indictable. Section 52 of the Justices Act required a complaint to be lodged within six months from the time when the matter of complaint arose. Thus, a complaint had to be lodged by not later than 15 January 2007. No complaint was lodged by then and the information was not laid until 15 February 2007.

[4] I am unable to see any merit in this contention. If the facts alleged by the prosecution are made out, the prosecution will have proved its case under s 132(2)(b) of the Criminal Code. I was referred by Mr Lee to my decision

in *R v Eldridge* (2005) 16 NTLR 112, but that case does not support a contention that the case against the plaintiff cannot succeed.

[5] I am unable to see any basis upon which it would be appropriate to stay the prosecution on this ground. It was not suggested that there was any improper purpose in laying the information, nor that the plaintiff would not receive a fair trial such as might warrant the grant of a stay: see *Williams v Spautz* (1992) 174 CLR 509. There is no unfairness to the accused merely because the prosecution decides to proceed with an indictable offence, although a lesser charge might have been laid on complaint at an earlier time.

[6] The second argument was based on s 3A of the Sexual Offences (Evidence and Procedure) Act. That section provides:

> "**3A. Time limit on prosecutions**
>
> (1) If a person is to be tried summarily for a sexual offence, the trial must be commenced within 3 months of the matter being first mentioned in court.
>
> (2) If a person is charged with an indictable offence that is a sexual offence, a preliminary investigation under Part V, Division 1 of the *Justices Act* must be commenced within 3 months of the matter being first mentioned in court.
>
> (3) If a person is to be tried on indictment for a sexual offence, the trial must be commenced within 3 months of the person being committed for trial.
>
> (4) The court in which the person is to be tried, or which is to conduct a preliminary examination (as the case may be) may, if it thinks fit, at any time and despite that the period fixed by subsection (1), (2) or (3) (as the case may be) has

expired, grant an extension, not exceeding 3 months, of the period.

(5) More than one extension may be granted under subsection (4).”

[7] It was conceded by counsel for the respondents, Ms Sharafeldin, that the matter was to be tried summarily by the Court of Summary Jurisdiction and that, although the matter had been mentioned on 5 April, 17 May and 20 September, no order extending time had been made under s 3A.

[8] Mr Lee submitted that it was now too late for the Court to make an order extending time under s 3A(4), because the power to extend time is limited to a period of three months only and more than six months has now passed since the matter was first mentioned on 5 April 2007.

[9] I am unable to accept the plaintiff’s argument. On the plain wording of s 3A(4) the Court can extend time at any time and notwithstanding that the time limited by s 3A(1), s 3A(2) or s 3A(3) has passed. There is no need to read into s 3A(4) a further limitation, that once six months has passed, an extension cannot be granted. The purpose of s 3A is not to place a time limit on prosecutions for the benefit of accused persons. Section 3A is directed to the Court hearing the charge or the justice conducting the preliminary examination. It is plainly designed to ensure that sexual offences are dealt with by the Courts expeditiously. This view of the purpose of s 3A is supported by the Minister’s Second Reading Speech, Hansard, Debates, 18 August 2004, p 7344, when the Minister explained that the purpose of the

section was to "deal with the problem of lengthy delays, which may cause further trauma for victims of sexual assault" and which means "that the quality of evidence from victims is compromised and victims experience further trauma as a result of the drawn out legal proceedings". The Minister noted that fast-tracking sexual assault cases "will not cause any significant problems in the administration of the courts". No mention was made of providing any form of relief from prosecution in favour of accused persons.

[10] Provisions such as s 3A have traditionally been held to be merely directory and do not take away the jurisdiction of Courts to hear charges laid outside of the prescribed time limit. The omission to comply with the time limit is the fault of the Court and is not one which could be remedied by either of the parties. In *Montreal Street Railway Co v Normandin* [1917] AC 170 at 175, the Privy Council said:

> "When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only…"

[11] That principle has been applied in many cases where the failure to comply with a legislative requirement could only be fulfilled by the Court itself: see *Ex parte Tasker; Re Hannan & Ors* (1971) 1 NSWLR 804 at 808-809; 817; *R v Urbanowski* [1976] 1 WLR 455 (where s 7(4) of the Courts Act 1971 (UK) required the trial of a person by a magistrates court to begin not later

than a prescribed period); *Accident Compensation Commission v Murphy* [1988] VR 444 (where s 117(5)(a) of the Accident Compensation Act (Victoria) required a Tribunal to commence hearing an application within 60 days of an application being lodged with the Tribunal). Of course, this is not an inflexible rule and must yield to a contrary conclusion if it is clear that the purpose of the Act would not be supported by such a construction, but in this case, it is clear, as I have said, that the purpose of the provision is to promote the speedy disposition by the Courts of proceedings relating to sexual offences and not to provide a time bar in favour of accused persons. The fact that the draftsman has used the word "must" indicates that there is an obligation on the Court to comply with the wishes of the legislature, but in the context of this section does not carry with it the consequence that the failure to so comply cannot be remedied by the Court exercising its power to grant an extension of time in the circumstances contended for by the plaintiff.
