Butler v Pryce [1999] NTSC 92

PARTIES:	BUTLER, Anthony
	v
	PRYCE, Leonard David
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	JA 26 of 1999
DELIVERED:	2 September 1999
HEARING DATES:	20 July 1999
JUDGMENT OF:	MARTIN CJ

REPRESENTATION:

Counsel:

Appellant:	Mr O'Reilly
Respondent:	Mr Burch

Solicitors:

Appellant:	NTLAS
Respondent:	DPP

Judgment category classification:	
Judgment ID Number:	mar99024
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Mar99024

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

Butler v Pryce [1999] SCNT 92
No. JA 26 of 1999

BETWEEN:

ANTHONY BUTLER
Appellant

AND:

LEONARD DAVID PRYCE
Respondent

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 2 September 1999)

[1] The appellant came before the Court of Summary Jurisdiction sitting at Alice Springs on 7 May 1999 when he was convicted and fined for a variety of offences. For driving a motor vehicle whilst having a concentration of alcohol in the blood equal to or more than 80mg per 100ml he was fined $500 with a $20 victim levy, for driving whilst unlicensed, driving an unregistered motor vehicle, and driving a motor vehicle that did not have a current compensation contribution, he was fined an aggregate of $1,000 with $60 in victim levies, and for possessing and carrying an offensive weapon, he was fined $100 with a victim levy of $20.

[2] The appellant received income of $300 per fortnight. He was allowed 12 months within which to pay the fines and the appropriate term of imprisonment was fixed in default of payment.

[3] The convictions amounted to a breach of an order suspending a sentence of imprisonment imposed for, inter alia, two charges of unlawful use of a motor vehicle. The part of the sentence held in suspense was six months. An application was made by the prosecutor that the Court restore that part of the sentence and order the offender to serve it. His Worship indicated during the course of submissions that:

- he intended to impose financial penalties for the current offences and allow 12 months to pay
- restore part of the suspended sentence, two months.

[4] His Worship said that in deciding upon that course he had taken into account the applicant's record of prior convictions for driving offences, the proportion of the suspended sentence ordered to be restored, and the need for the appellant to be reminded of the requirement to pay the penalty.

[5] The appeal is grounded on his Worship's making the order allowing the appellant time to pay the fine. First, it is said that in the absence of an application, such an allowance should not have been made. The *Sentencing Act* 1995 (NT) does not envisage an application being made for time to pay a fine at the time the fine is imposed. If the offender is present when it is

imposed, it is payable not later than one month thereafter (s 19(a)), but the Court may order that the offender be allowed a longer or shorter time (s 20(b)). An officer of the Court may make an order allowing time to pay upon application being made (s 21), a power which it appears might usefully be used when an offender was not present in Court when the fine was imposed (s 19(b)). It is to be noted, however, that the power of the Court to make such an allowance is not expressly dependent upon an application being made.

[6] Nowhere does it appear that any of the range of sentencing orders initially available to a Court depend upon an offender (or the prosecutor for that matter) making an application. Orders for variations, cancellations and enforcement can be made, but only upon an application, including for the variation of orders made for payment of a fine by instalments or allowing time to pay. In my opinion it is not a prerequisite of a Court's jurisdiction that an offender make application for time to pay a fine. It is a matter within the discretion of the Court taking into account the provision of s 17.

[7] Then it is put that the order allowing time to pay deprives the offender of a benefit and should not have been made on that ground. The benefit is said to be derived from s 61 of the *Sentencing Act*. Relevantly it provides that every term of imprisonment imposed on an offender in default of payment of a fine shall, unless otherwise directed by the Court, be served concurrently with any incomplete sentence of imprisonment imposed on the offender

whether the other sentence was imposed before or at the same time as that term.

[8] The transcript discloses that the learned Chief Magistrate indicated his intentions regarding the imposition of pecuniary penalties and partial restoration of the suspended sentence, and raised the question of time to pay. Counsel for the offender at once said that no time was sought. The issue was discussed between bench and bar and his Worship gave reasons for his decision. There was no procedural unfairness.

[9] I consider that s 61(b) applies in the circumstances of this case. The order restoring part of the suspended sentence creates an "incomplete sentence" and thus the term of imprisonment imposed on the appellant in default of payment of the fine would have been served concurrently with it if no other order was made. An order could have been made that the term in default of payment be served cumulatively on the incomplete sentence. The order that time be allowed to pay fines effectively put an end to the operation of that provision. The appellant says that he is now faced with the prospect of returning to gaol for the default period at the expiry of the time allowed to pay. That does not necessarily follow. He has a number of options available. He can pay the fines, apply for a variation of the order (s 21(c) and s 22) or apply to participate in an approved project (s 26 and s 27). Whatever the outcome, the appellant stands to be punished, something he wished to avoid, relying on the operation of s 61(b).

[10] His Worship was aware of that. He took the view that in the circumstances of the case before him, the offender needed to have it brought home that his current offending would not go unpunished, the appellant needed to be reminded of that. It is inherent from his Worship's remarks that he considered that personal deterrence was important for the protection of the community. That was a view which was open to be taken. I am not prepared to hold that his Worship erred in the exercise of the discretion undoubtedly available. His Worship took the decision well knowing the consequences for the appellant, and after giving him some benefit in relation to the restoration of the partly suspended sentence of imprisonment.

[11] The appellant had been given the opportunity to avoid serving the sentence of imprisonment and to keep out of trouble. He did not do so, and he was accordingly at risk of serving the whole punishment warranted by that earlier offending. He was liable to punishment for the current offending in addition (see the remarks of King CJ. in *R v Kain* (1985) 38 SASR 309 at 311). I agree with his Worship that to allow the statute to operate in the circumstances of this case, would make the imposition of the fine nugatory. The orders made by his Worship did not make the punishment manifestly excessive.

[12] The appellant also referred to a number of sentencing dispositions in which the Court of Summary Jurisdiction had not allowed time to pay when a sentence to a term of imprisonment was imposed at the same time. It is not possible to draw parallels with this matter. It is not known whether in those

cases the offender had the financial ability to pay fines. In many cases it appears that the offences leading to the imposition of fines and sentences of imprisonment occurred at the same time or arose from the same set of circumstances.

[13] I am not satisfied that what his Worship did gives rise to any justification for a complaint based upon parity of sentencing or by increasing a range of sentences for particular offences without warning.

[14] The appeal is dismissed.
