

PARTIES: MARSHALL, Joel
v
LOWNDES SM, John

AND

NOBLE, James Gordon

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 9 of 1997

DELIVERED: ALICE SPRINGS, 2 May 1997

HEARING DATES: 18 April 1997

JUDGMENT OF: MARTIN CJ

CATCHWORDS:

Prerogative writs - Mandamus and certiorari - Writs and orders -
Certiorari - Grounds for certiorari to quash - Excess or want of
jurisdiction - Particular matters where no defect of jurisdiction - Plea
of guilty admits all necessary legal ingredients of offences charged -
Includes an admission that had no excuse - Court had jurisdiction to
hear and determine all matters brought before it.

Justices Act (NT) 1928, ss67 and 164
Juvenile Justice Act (NT) 1983, s18

The Colonial Bank of Australasia v Willan (1874) LR 5 PC 417 at 442,
referred to.

R v Deland and Dredge; Ex parte Billy Jabanardi Willie, Kearney J., NT
Supreme Court, unreported 31 October 1996, applied.

Prerogative writs - Mandamus and certiorari - writs and orders -
Certiorari - Grounds for certiorari to quash - Fraud or collusion -
Fraud on the court - No evidence to found such finding - Plaintiff
failed to discharge onus of proof.

Hallahan v Campbell; Ex parte Campbell (No. 2) (1964) Qd R. 337,
referred to.

REPRESENTATION:

Counsel:

Plaintiff: Victoria Shiel
First Defendant: Kathryn Perry
Second Defendant: John Birch

Solicitors:

Plaintiff: CAALAS
First Defendant: McBride and Stirk
Second Defendant: Office of the Director of Public Prosecutions

Judgment category classification: C
Judgment ID Number: mar97018
Number of pages: 4

mar97018

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

No. 9 of 1997

BETWEEN:

JOEL MARSHALL
Plaintiff

AND:

JOHN LOWNDES SM
First Defendant

AND

JAMES GORDON NOBLE
Second Defendant

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 2 May 1997)

The plaintiff seeks an order in the nature of certiorari, or in the alternative, mandamus, bringing up and quashing orders made by the first defendant sitting as a Court of Summary Jurisdiction at Tennant Creek on 24 July 1996 by which the plaintiff was convicted of sundry offences and

placed on a good behaviour bond. In fact his Worship was not sitting as the Court of Summary Jurisdiction, but as the Juvenile Court, but that makes no difference to the nature of the proceedings nor the outcome.

The application is made well out of time, but given the circumstances shortly to be explained, there was no objection to an appropriate order extending time being made and that was done.

When the plaintiff appeared before the Juvenile Court, represented by counsel, he pleaded guilty to the offences and was dealt with accordingly. (*Justices Act (NT) 1928, s67*). However, it was later discovered that at the time he had committed the offences he was but nine years of age, and thus excused from criminal responsibility (*s38(1) Criminal Code (NT) 1983*).

In accordance with general practice, there appeared upon the information immediately following his name the words, “(male, 1/01/85)” which is generally understood as being identification of the alleged defendant by way of gender and birth date. There is no evidence as to how the erroneous date came to appear upon the information, but it may be safely assumed that it was not plucked from the air, and that the investigating police obtained information to that effect. The affidavit filed in support of the application says that counsel who represented the plaintiff: “accepted the plaintiff’s date of birth as being 1 January 1985 as presented by the second defendant”.

Arguing for the grant of relief, counsel for the plaintiff relied upon the decision of Kearney J. in *The Queen v Deland and Dredge; Ex parte Billy Jabanardi Willie*, unreported 31 October 1996. His Honour was there dealing with an application for similar relief brought by *Billy Willie* who had pleaded guilty to certain offences before a Court of Summary Jurisdiction and dealt with thereon. It transpired that due to lack of understanding between him and his counsel he was not the person who was the subject of the proceedings, and had thus been wrongly convicted. One of the questions in those proceedings which his Honour resolved, was that arising from the operation of s164 of the *Justices Act* providing that a conviction or order, determination or adjudication shall not be removed into the Supreme Court except as provided by that Act. That provision applies to proceedings in the Juvenile Court (s18 *Juvenile Justice Act* (NT) 1983).

The argument in this case was limited to that advanced before his Honour, that is, that such a provision does not absolutely deprive a Supreme Court of its power to issue a writ of certiorari to bring up proceedings of the inferior court, but enables that jurisdiction to be exercised “upon the ground either of a manifest defect of jurisdiction in the tribunal that made it, or of manifest fraud in the party procuring it”, *The Colonial Bank of Australasia v Willan* (1874) LR. 5 PC 417 at 442. I agree that for the reason given by Kearney J. on the matter before him that there was no manifest defect of jurisdiction in the Juvenile Court. The information was properly laid, the Court had jurisdiction

to hear and determine the matters brought before it and the plaintiff pleaded guilty. The effect of the plea is that the plaintiff then admitted against himself all the necessary legal ingredients of the offences charged and that also necessarily included an admission that he did not have an excuse because he was under the age of ten. If he had raised any evidence to indicate that he was not of that age, then it would have been necessary for the prosecutor to prove it beyond reasonable doubt, but there was never any such an issue.

As to fraud on the Court, even given an extended meaning of mere recklessness (*Hallahan v Campbell; Ex parte Campbell (No. 2)* (1964) Qd. R. 337) there is just no evidence which would lay any foundation for such a finding. The only material before his Worship indicating a date of birth was that appearing on the information, and it cannot be the case that just because that was wrong, it imports fraud or recklessness to the person who prepared it. It is up to the plaintiff to prove the point and he has failed to do so.

No other argument was advanced to support the granting of the discretionary relief sought.

The application is dismissed. There is another remedy available as discussed with counsel in the course of the submission.
