

Jenkins v Todd [2016] NTSC 15

PARTIES: JENKINS, Trevor

v

TODD, Walter

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING APPELLATE
JURISDICTION

FILE NO: JA 10 of 2015 (21425645)

DELIVERED: 21 MARCH 2016

HEARING DATES: 19 FEBRUARY 2016

JUDGMENT OF: KELLY J

REPRESENTATION:

Counsel:

Appellant: Self-represented

Respondent: G Macdonald

Solicitors:

Appellant:

Respondent: Solicitor for the Northern Territory

Judgment category classification: B

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

Jenkins v Todd [2016] NTSC 15
No. JA 10 of 2015 (21425645)

BETWEEN:

TREVOR JENKINS
Appellant

AND:

WALTER TODD
Respondent

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 21 March 2016)

- [1] On 21 January 2016 Barr J directed the Registrar to apply by summons for the punishment of Mr Jenkins for contempt of court. The direction was made as the result of a number of exchanges that occurred between his Honour and Mr Jenkins in the course of an appeal by Mr Jenkins against his conviction on a number of charges in the Court of Summary Jurisdiction.
- [2] On 4 February 2016, in compliance with that direction, the Registrar filed a summons and affidavit and statement specifying the contempt with which Mr Jenkins is charged. These were subsequently served on Mr Jenkins.
- [3] On 19 February 2016, I held a directions hearing in relation to the contempt proceedings. At the directions hearing, Mr Jenkins maintained that the

process whereby he has been charged with contempt and summonsed to appear before the court was “unlawful” and that I had no jurisdiction to deal with the matter. I made certain directions in relation to the filing of submissions and statements of evidence.

- [4] A further directions hearing was held on 2 March 2016 at Mr Jenkins’ request and on that date I amended certain of the previous directions, allowing Mr Jenkins (and the Registrar) some extensions of time and, at Mr Jenkins’ request, changing the order in which submissions were to be made so that the issue of whether or not the present proceedings are unlawful would be determined before Mr Jenkins was required to file any evidence or submissions in relation to the substantive contempt proceedings.
- [5] In accordance with the directions made on 2 March, on 11 March 2016 Mr Jenkins filed hand written submissions in relation to the legality of the present proceeding and the reasons why he says the proceeding is unlawful.
- [6] Mr Jenkins made the following submissions.
- (a) He contended that Barr J was in error in not hearing the case “inside” the appeal. The contention appeared to be that the charge of contempt “should have been laid and bail applied” before the finalisation of the original proceeding in which, it is alleged, the contempt occurred – namely Mr Jenkins’ appeal against his convictions.

(b) He contended that only Barr J “can hear and prosecute and judge and sentence” a contempt in his own court and, further, that once his Honour had given judgment in the original proceeding, “then he has no continuing powers over [Mr Jenkins] as a free citizen”.

[7] These submissions cannot be accepted. It is simply not the case that where it is alleged that a person has committed a contempt of court, only the judge presiding at the time of the alleged contempt has the power to hear contempt proceedings against that person. Such proceedings are routinely heard and determined by another judge. Indeed it is generally thought more appropriate that the case not be heard by the judge directly affected by the alleged contempt so that no question of perceived bias can be thought to arise.

[8] As an example, the opening sentences of the joint judgment of Brennan, Deane, Toohey and Gaudron JJ in *Witham v Holloway*¹ are as follows:

This is an appeal from a unanimous decision of the Court of Appeal of the Supreme Court of New South Wales dismissing an appeal from an order of Hodgson J committing John Allan Witham (“the appellant”) to prison for one month for contempt of court. His Honour found the appellant guilty of contempt in that he failed to comply with orders made by Powell J in proceedings brought against him and others by John William Holloway (“the respondent”) as Commissioner for Consumer Affairs (“the substantive proceedings”).

[9] The High Court made no criticism of the fact that the substantive proceedings in relation to which the contempt was alleged to have occurred were heard by one judge (Powell J) and the subsequent contempt

¹ (1985) 183 CLR 525

proceedings were heard and determined by another judge (Hodgson J). Nor was this the subject of any ground of appeal. It is simply the way these matters are dealt with.²

[10] Nor is it correct that contempt proceedings cannot be brought once judgment has been given in the original proceeding. There is no substance to this contention in either logic or law. Mr Jenkins cited *Halsbury's Laws of Australia*³ as supporting this proposition, but the passage relied upon does not do so. Mr Jenkins referred to this sentence in *Halsbury*: "Conduct does not constitute contempt in the face or hearing of the court if the proceedings in which the contempt is said to have occurred are complete."⁴ This has no bearing on when proceedings to punish a contempt may be heard or who may hear them. In this case Mr Jenkins has been charged with contempt in relation to conduct which did occur while proceedings were on foot. The conduct said to constitute contempt occurred during the hearing of Mr Jenkins' appeal on 20 January 2016. Barr J handed down his decision on that appeal on 21 January 2016.

² *Witham v Holloway* was a case of alleged contempt by reason of a failure to comply with court orders. However, I see no reason why any different principle would apply to an alleged contempt in the face of the court. Indeed in such a case it would seem even more appropriate for the matter to be dealt with by a "neutral" judge except where it is necessary to deal summarily with a contempt in the face of the court in order to prevent disruption of the court's proceedings.

³ LexisNexis, *Halsbury's Laws of Australia* (at 20 March 2016)

⁴ At 105 Contempt, 'Contempt in the Face of the Court' [105-25]

[11] Mr Jenkins also placed reliance on *Re McBride; Ex parte Stewart*⁵, but that case has no application. The court there merely held that where the allegation is the making of a false affidavit in concluded proceedings, the appropriate course is prosecution for perjury, not contempt. Mr Jenkins referred to this passage in *Re McBride*⁶ :

In s 31(2) it is provided that:

“The jurisdiction of the Court to punish a contempt of the Court committed in the face or hearing of the Court may be exercised by the Court as constituted at the time of the contempt.”⁷

[12] That does not assist Mr Jenkins either. First it is a reference to the statutory powers of the Federal Court and says nothing about the jurisdiction of this Court. The Supreme Court of the Northern Territory, as a superior court of record⁸, has inherent jurisdiction to deal with a person for contempt.⁹

[13] Second, even in its reference to the Federal Court neither s 31(2) nor the Court in *Re McBride* purport to say that contempt in the face of the court must be dealt with by the Court as constituted at the time of the contempt. This court too may deal summarily with a contempt committed in the face of the court but is not obliged to do so. The Northern Territory Supreme Court

⁵ (1995) 60 FCR 569

⁶ on p 570

⁷ In his submissions Mr Jenkins also referred to s 17 of the *Federal Magistrates Act 1999* to the same effect. This is likewise irrelevant.

⁸ *Supreme Court Act (NT)* s 12

⁹ See *Grassby v R* (1989) 168 CLR 1 at [21]

Rules set out two distinct procedures for dealing with contempt in the face of the court. These are discussed below.

[14] Mr Jenkins went on in his submissions to complain that Barr J had misled “the court”¹⁰, prosecuting and defence counsel and Mr Jenkins, and denied Mr Jenkins natural justice in two related ways.

(a) Mr Jenkins asserts that Barr J said in court “he wasn’t prosecuting or doing anything with the contempt” and he didn’t frame contempt charges or bail.

(b) He further complains that his Honour “acted unlawfully and deceitfully by secretly handing contempt authority jurisdiction and acting judicial power to a civil registrar ... who had no power to make or act on criminal judicial claims or prosecutions.”

[15] These contentions, too, are baseless. First, it is clear from the transcript that Barr J at no stage indicated that Mr Jenkins would not be proceeded against for contempt.¹¹ On 20 January 2016 during the course of hearing Mr Jenkins’ appeal, the following exchanges occurred between his Honour and Mr Jenkins:

First exchange:

HIS HONOUR: Mr Jenkins, if there’s any further evidence that you wish to tender on this appeal could you let me know what it is?

¹⁰ that is to say, presumably, himself

¹¹ Nor would it be relevant to the question of whether I have jurisdiction to hear and determine the matter if he had.

MR JENKINS: Yes.

HIS HONOUR: I can then decide whether I receive it or not because as the ---

MR JENKINS: Yes. Well, I would like to ---

HIS HONOUR: Excuse me. Excuse me, Mr Jenkins ---

MR JENKINS: I would like to tender this ---

HIS HONOUR: If you stop, please. If you interrupt me again ---

MR JENKINS: I'm not interrupting you. You asked the evidence and I'm just answering the question.

HIS HONOUR: If you interrupt me when I'm speaking and speak over me I will charge you with contempt. I've had enough of this. Now, please listen.

MR JENKINS: I'm not contempting. I'm just saying something. You asked ---

HIS HONOUR: Mr Jenkins, please listen.

Second exchange:

HIS HONOUR: Mr Jenkins, just for the record I'll note that the document which has just been marked as MFI 1 with today's date, 20 January, on the appeal comprises a copy letter to Mr Jenkins dated 19 March 2015.

MR JENKINS: That's incorrect.

HIS HONOUR: Excuse me.

MR JENKINS: That's incorrect. It's not a copied letter. It's an internal document.

HIS HONOUR: Mr Jenkins ---

MR JENKINS: It's not a letter.

HIS HONOUR: --- would you please be quiet?

MR JENKINS: No. You're lying onto the transcript, Mr Barr. It's not a copied letter to Mr Jenkins.

HIS HONOUR: Mr Jenkins, ---

MR JENKINS: It's actually ---

HIS HONOUR: Mr Jenkins, what you've just said amounts to an extreme contempt.

MR JENKINS: No it doesn't.

HIS HONOUR: I intend to charge you with contempt. Please sit down and let me read these documents onto the record.

MR JENKINS: There's no copied letter.

HIS HONOUR: If you don't sit down you will be aggravating the contempt. Sit down, please.

MR JENKINS: There is no copy of the letter, Mr Barr. There's no letter to me.

HIS HONOUR: Mr Jenkins, I've got the documents here. Please sit down.

MR JENKINS: Could you tell the truth? On the front there's an internal document there that says whether I accept it and it's not stamped. This is an internal document that I can't even get a hold of. Why don't you tell the truth about that? There's no letter towards me.

Third exchange:

HIS HONOUR: Mr Jenkins, if you interrupt again – I've already told you that I'm intending to charge you with contempt ---

MR JENKINS: Well, that's fine. I hope you're charging him with contempt as well. Because, he's doing the same thing.

HIS HONOUR: Mr Jenkins, please sit down. Don't make your contempt worse.

MR JENKINS: You try it Barr. You go for it. I don't care anymore. You know. I know what's corruption and I know what's the truth. I'm standing here as the only honest person here talking about stuff and he's said he's talked to Patrick Gregory. I've talked to Patrick Gregory. You know.

Fourth exchange:

HIS HONOUR: Mr Jenkins. Mr Jenkins, you are making your contempt worse. Every time you get up and interrupt, you are making it worse. Do you know that there ---

MR JENKINS: It's not contempt to say that he's trying to get evidence and I'm objecting to that. I object to that. I object to that.

HIS HONOUR: It's contempt to talk over me when I want Mr Murphy to make his address to me so that I can work out what he wants to say. Please sit down.

MR JENKINS: Am I going to be – I'm object to his evidence. Can you put that on the file, please.

HIS HONOUR: Yes. That will be on the transcript, thank you.

It is these exchanges that form the basis of the charge of contempt particularised in the statement filed by the Registrar.

[16] The following day, before delivering judgment on Mr Jenkins' appeal, his Honour said this:

HIS HONOUR: ...

Mr Jenkins the first thing I will do is mention the contempt matter that I raised yesterday. Yesterday I stated my intention to charge you with contempt of court for your contempt of court in the face of the court yesterday morning between 9:12 and 10 o'clock.

I was intending to proceed against you summarily, however I granted you bail rather than remand you in custody in relation to the intended summary charge.

I have now decided to adopt the procedure in Part 3 of Chapter 75 of the Supreme Court Rules which is an alternative procedure applicable to contempt of court committed in the face of the court.

Given that the appeal hearing in which [your] contempt of court occurred has now been completed there is no immediate need to uphold the authority of this court by proceeding against you summarily.

Accordingly pursuant to Supreme Court Rule Chapter 75, rule 7, sub-rule (1) I direct the Registrar of the Supreme Court to apply by summons for the punishment of your contempt that summons will specify the acts of contempt with which you are charged. And I refer you to Supreme Court Rules Chapter 75, rule 6, sub-rule (4).

[17] Far from acting secretly as asserted, Barr J tried hard to explain the implications of this to Mr Jenkins. His Honour began:

What that means is you will receive a summons and supporting documents in due course. That summons will require you to attend court ...

[18] However, Mr Jenkins simply refused to listen. He interrupted his Honour and this exchange occurred:

MR JENKINS: I'm not in a criminal jurisdiction – I'm in a civil jurisdiction.

HIS HONOUR: Mr Jenkins, please sit down.

MR JENKINS: It doesn't even apply.

HIS HONOUR: Mr Jenkins would you please sit down ---

MR JENKINS: It's a civil court.

[19] The transcript continues in the same vein for three and a half pages with Mr Jenkins growing ever more agitated including the following exchanges:

MR JENKINS: You haven't enacted the thing in right way in the first place. So what are you going on, it's ridiculous.

HIS HONOUR: Mr Jenkins, please sit down and listen.

MR JENKINS: What you started is wrong ---

HIS HONOUR: Otherwise you can leave the court and I'll keep saying what I'm going to say. It's a matter for you.

...

HIS HONOUR: Mr Jenkins, please sit down.

MR JENKINS: Well you haven't done it – you haven't done it the right way in the first place. There was no bail application that I signed yesterday.

HIS HONOUR: Mr Jenkins, please sit down, you're interrupting.

MR JENKINS: You don't even know you are doing. You're going senile and you don't know what you're doing.¹²

[20] His Honour finally managed to explain:

HIS HONOUR: I refer to Supreme Court Rule Chapter 75, Rule 6, sub-rule (4).

You will receive a summons and supporting documents in due course. That summons will require you to attend court on a specified date to respond to the application. Meanwhile I see no reason for your detention in custody and I release you from any further bail obligations.

[21] His Honour then tried to assist Mr Jenkins by having the associate provide him with a copy of the explanation he had just given in writing but Mr Jenkins refused to accept it. It is therefore, perhaps unsurprising that, as the present submissions demonstrate, Mr Jenkins does not have a proper understanding of the procedure being adopted in these contempt proceedings.

[22] The procedure his Honour adopted is the alternative procedure set out in Rule 75.06 which provides (relevantly):

Procedure

- (1) Application for punishment for the contempt shall be by summons or originating motion in accordance with this rule.

¹² These exchanges on 21 January 2016 are not the subject of any contempt charge against Mr Jenkins.

- (2) Where the contempt is committed by a party in relation to a proceeding in the Court, the application shall be made by summons in the proceeding.

...

- (4) The summons or originating motion shall specify the contempt with which the respondent is charged.
- (5) The summons or originating motion and a copy of every affidavit shall be served personally on the respondent, unless the Court otherwise orders.

[23] In the case of contempt of court committed in the face of the Court, (which is what is alleged against Mr Jenkins) the procedure under Rule 75.06 is alternative to that under Rules 75.01 to 75.04 which provides for the person accused of contempt in the face of the court to be arrested and dealt with summarily.¹³

[24] So far as Mr Jenkins' objection to the involvement of the Registrar is concerned, this is the procedure prescribed by the Rules. Rule 75.07 provides (relevantly):

Application by Registrar

- (1) The Court may, by order, direct the Registrar to apply by summons or originating motion for punishment of a contempt.

[25] The direction to the Registrar to apply by summons to have Mr Jenkins dealt with for contempt did not hand "acting judicial power to a civil registrar" as contended by Mr Jenkins. It is simply the mechanism prescribed by the

¹³ Rule 75.05(2)

Rules for bringing Mr Jenkins before the Court. The application by the Registrar will be heard and determined by me.

[26] In summary, these proceedings are not “unlawful” and I do have jurisdiction to hear and determine the charge of contempt instituted against Mr Jenkins by summons dated 4 February 2016.

[27] The balance of Mr Jenkins’ submissions filed on 11 March 2016 were not relevant to the question of whether I have jurisdiction to deal with this matter, but rather to the substantive issue of whether Mr Jenkins is guilty of contempt. I will consider those submissions (along with whatever other submissions Mr Jenkins wishes to make on that subject) when determining the contempt proceeding. Under the directions which I made on 2 March, those further submissions are to be in writing and filed by 24 March 2016 along with any evidence Mr Jenkins intends to rely on in the form of written statements and a list of any witnesses he intends to call from whom he has been unable to obtain a written statement.
