

PARTIES: ROBIN LAURENCE TRENERRY  
v  
KYLIE DIANE DOWELL

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: Justices Appeal

FILE NO: JA 70 of 1998

HEARING DATE: 2 SEPTEMBER 1998

DELIVERED: 28 SEPTEMBER 1998

JUDGMENT OF: OLNEY J

**CATCHWORDS**

Statutory Interpretation – *Sentencing Act 1995* (NT) – Mandatory sentencing for property offences – multiple property offences specified in same information – findings of guilt “to be taken as a single finding of guilt” – prohibition against concurrent terms not relevant.

*Sentencing Act 1995* (NT) s 78A (3A); (4).

Criminal law – jurisdiction, practice and procedure – judgment and punishment – sentence – *Sentencing Act 1995* (NT) – mandatory sentencing specified in same information – findings of guilt “to be taken as a single finding of guilt” – prohibition against concurrent sentences not relevant.

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

No JA 70 of 1998

IN THE MATTER OF the Justices Act

AND IN THE MATTER OF an appeal against  
a sentence of the Court of Summary  
Jurisdiction at Darwin

BETWEEN:

ROBIN LAURENCE TRENERRY

Appellant

and

KYLIE DIANNE DOWELL

Respondent

Coram: Olney J

REASONS FOR JUDGMENT  
(Delivered 30 September 1998)

This is an appeal from a decision of Mr R.J. Wallace, Stipendiary Magistrate, sitting in the Court of Summary Jurisdiction at Darwin.

On 25 June 1998 the respondent pleaded guilty to 4 counts of unlawful entry (contrary to s 213 of the *Criminal Code*) and 4 counts of stealing (contrary to s 210 of the *Criminal Code*) and on 30 June 1998 the Magistrate recorded a conviction and sentenced her to a term of 4 months imprisonment. At the same time the Magistrate directed that the sentence be partly suspended for 2 years after the respondent had served 14 days in prison. His Worship also made an order pursuant to s 40(2) of the *Sentencing Act* placing the respondent under supervision for 12 months after her release from prison.

All 8 counts in respect of which the respondent was found guilty were specified in the same information. Each was a property offence as defined in s 3 and Schedule 1 of the *Sentencing Act*. The respondent had not previously been found guilty of a property offence.

In passing sentence the Magistrate said:

“In my view, the seriousness of the offence is, and the number and circumstances, according to normal principles, call for a sentence of imprisonment to be passed upon you, and I propose to sentence in the aggregate to four months imprisonment for the eight offences”.

On 9 July 1998 the Magistrate published written reasons for his decision but as the issue in this appeal turns upon a question as to the correct construction of the *Sentencing Act* I do not find it necessary to make reference to those reasons.

The single ground of appeal is that the Magistrate erred in law in that he failed to apply s 78A(3A) of the *Sentencing Act*.

In order to place the issue raised by the appeal in its full context it is necessary to say something about the statutory regime in which it has arisen.

Section 40 of the *Sentencing Act* makes provision for the suspension in whole or in part of sentences of imprisonment. Later sections deal with related matters including the consequences of breaching an order suspending a sentence. Sections 50 and 51 deal with the circumstances under which multiple sentences may be served either concurrently or cumulatively. Section 52 permits a court to impose an aggregate sentence of imprisonment when an offender is found guilty of 2 or more offences joined in the same information, complaint or indictment. As the provisions of s 52 play a pivotal role in the appellant’s argument I will set out below the full text of the

relevant subsections, together with those parts of sections 78A and 78B which have a bearing upon the appeal.

**52. Aggregate sentence of imprisonment.**

- (1) Where an offender is found guilty of 2 or more offences joined in the same information, complaint or indictment, the court may impose one term of imprisonment in respect of both or all of those offences but the term of imprisonment shall not exceed the maximum term of imprisonment that could be imposed if a separate term were imposed in respect of each offence.
- (2) ....
- (3) Subject to s 78A, a court must not impose one term of imprisonment under subsection (1) where one of the offences in respect of which the term of imprisonment would be imposed is a property offence.

**78A Imprisonment for Property Offenders.**

- (1) Where a court finds an offender guilty of a property offence, the court shall record a conviction and order the offender to serve a term of imprisonment of not less than 14 days.
- (2) Where a court finds an offender guilty of a property offence and the offender has once before been found guilty of a property offence, the court shall record a conviction and order the offender to serve a term of imprisonment of not less than 90 days.
- (3) Where a court finds an offender guilty of a property offence and the offender has 2 or more times before been found guilty of a property offence, the court shall record a conviction and order the offender to serve a term of imprisonment of not less than 12 months.
- (3A) Despite sections 50 and 51, the mandatory period of a term of imprisonment imposed in pursuance of subsection (1), (2) or (3) is not to be served concurrently with the term of imprisonment for another offence (whether that other offence is a property offence or not).
- (4) Where an offender is found guilty of more than one property offence specified in the same information, complaint or indictment, the findings of guilt are, for the purposes of this section, to be taken as a single finding of guilt, whether or not all the offences are the same.
- (5) Where an offender is found guilty of more than one property offence as part of a single criminal enterprise, all the findings of guilt are together a single finding of guilt for the purposes of this section, whether or not the offences are the same.
- (6) ...
- (7) ...

**78B Additional Orders for Property Offences.**

- (1) In addition to the order required to be made under section 78A, the court may make a punitive work order or any other order it may make under this Act.
- (2) An order referred to in subsection (1) cannot be made if its effect could be to release (whether conditionally or unconditionally) the offender from the

requirement to serve the mandatory period as a term of actual imprisonment.

Section 3 provides that:

“Mandatory period” in relation to an offender found guilty of a property offence, means so much of a term of imprisonment as is required to be imposed on the offender under section 78A.

The significance of s 78B in the present case is that it permits a court dealing with an offence to which s 78A applies to partially suspend a term of imprisonment provided that the suspension does not have the effect of permitting the person concerned to be released from prison before serving the relevant mandatory period.

In sentencing the respondent the Magistrate expressed an intention to impose a sentence “in the aggregate ..... for the eight offences”. In so expressing himself, he presumably had in mind the provisions of s 52, but as the occasion to impose an aggregate sentence only arises when an offender has been “found guilty of 2 or more offences joined in the same information etc” it is necessary first to determine whether or not that circumstance arose in this case. If, on the proper construction of s 78A, multiple findings of guilt of property offences joined in the same information are to be treated as a single finding of guilt, there can be no question of an aggregate sentence being imposed for that finding of guilt. The position would of course be different in the case of findings of guilt in respect of both property offences and other offences joined in the same information, but that case is not this case.

Although the only ground of appeal complains that the Magistrate failed to apply s 78A (3A) of the *Sentencing Act*, that does not appear to be the real complaint. Subsection (3A) contains a prohibition against ordering that the mandatory period of a term of imprisonment imposed pursuant to subsections (1), (2) or (3) to be served concurrently with a term of imprisonment for another offence. This is not a case of

an order having been made for the serving of multiple sentences concurrently. It is clear that the Magistrate imposed a single sentence so that no question of the application of ss (3A) arose.

The real complaint is that, as the appellant says, the Magistrate should have imposed a separate sentence, with a separate mandatory period, in respect of each finding of guilt; and had he done so, by reason of s 78A(3A) each of those sentences would have to be served cumulatively. It would follow therefore that any order partially suspending the sentences would have to ensure that the respondent served 8 cumulative mandatory periods of 14 days each before being released from prison.

It is beyond question that the instant case falls squarely within the ambit of s 78A(4). The respondent was found guilty of more than one property offence specified in the same information. That being so, the several findings of guilt were, for the purposes of s 78A, to be taken as a single finding of guilt. In the absence of any prior conviction for a property offence, it was appropriate that s 78A(1) be applied in relation to that deemed single finding of guilt. Accordingly, the court was required to, and did, record a conviction and order the respondent to serve a term of imprisonment of not less than 14 days. The Magistrate's order partially suspending the sentence of 4 months imprisonment did not have effect so as to authorise the release of the respondent from the requirement to serve the relevant mandatory period as a term of imprisonment.

The appellant says that in construing ss (1), (2) and (3) of s 78A, the rule of construction that the singular includes the plural should apply so that when, as in s 78A(1), it is said "where a court finds an offender guilty of a property offence" this covers the case of the finding of guilt in respect of 2 or more such offences, and

similarly, the requirement to “record a conviction” means “record convictions for each offence”; and “order the offender to serve a term of imprisonment of not less than 14 days” means “order the offender to serve a term of imprisonment for each offence of not less than 14 days”.

The construction advocated for the appellant can only be correct if s 78A(4) is ignored. In the circumstances to which that subsection refers, the several findings of guilt are “*for the purposes of this section, to be taken as a single finding of guilt*”. In this case the provisions of s 78A are to be applied as if there was but a single finding of guilt. For that reason no question of aggregation nor of concurrent sentencing arises. There was one finding of guilt; one conviction was recorded; one sentence imposed which attracted one mandatory period of 14 days.

In my opinion, the only error that the Magistrate made was to regard the sentence of 4 months imprisonment as an aggregate sentence imposed for multiple convictions of offences charged in the same information. The limitation contained in s 52(3) upon the power to impose an aggregate sentence when one of the offences is a property offence is expressly made subject to the provisions of s 78A. With or without the qualifying words “subject to section 78A” s 52(3) cannot alter the meaning or effect of s 78(4) but their use in s 52(3) tends to emphasise that the provisions of s 78A must prevail.

The sentence imposed by the Magistrate was, for the reasons he expressed, an appropriate sentence for the series of offences committed by the respondent, and as the imposition of a single term of imprisonment, with a single mandatory period has not been shown to be erroneous in law the appeal must be dismissed.

I am conscious that the opinion I have expressed as to the construction of the relevant provisions of the *Sentencing Act* in some respects contradicts assertions made in the Legislative Assembly as to the effect of amendments made to the *Sentencing Act* by the *Sentencing Amendment Act 1998* (Act No 14 of 1998). That this is so results not from any intention to frustrate the will of the legislature but rather by applying to the language used in the legislation the plain and ordinary meaning of the words used. This is not a case in which the provisions of the Act are ambiguous or obscure, nor does the ordinary meaning conveyed by the text of the provisions in question lead to a result that is manifestly absurd or unreasonable. On the contrary, the meaning is clear and expressed in unequivocal terms. There is no occasion to resort to extrinsic material as an aid in interpreting the Act. The law must be given effect to according to its tenor.

The appeal is dismissed.