PARTIES:	**MAX MURRUNGUN**
	v
	DAVID NICHOLAS PEACH
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL FROM COURT OF SUMMARY JURISDICTION exercising Territory jurisdiction
FILE NO:	JA 36 of 1997 (9610337)
DELIVERED:	18 April 1997
HEARING DATES:	11 April 1997
JUDGMENT OF:	Bailey J

REPRESENTATION:

Counsel:

Appellant:	Melanie Little (NAALAS)
Respondent:	Ron Noble (DPP)

Solicitors:

Appellant:	
Respondent:	

Judgment category classification:	B without catchwords
Judgment ID Number:	BAI97006
Number of pages:	5

BAI97006

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

No. JA 36 of 1997
9610337

IN THE MATTER OF the Justices Act

AND IN THE MATTER OF an appeal against the severity of sentence imposed by the Court of Summary Jurisdiction at Alyangula.

BETWEEN:

MAX MURRUNGUN
Appellant

AND:

DAVID NICHOLAS PEACH
Respondent

CORAM: BAILEY J

REASONS FOR DECISION

(Delivered 18 April 1997)

This is an appeal against a sentence imposed by the Court of Summary Jurisdiction at Alyangula on 14 May 1996 in respect of an offence committed on 11 May 1996.

The appellant was convicted upon his own plea of bringing liquor into a restricted area contrary to section 75(1)(a) of the *Liquor Act.*

The facts, which the learned trial Magistrate found proved for the purpose of sentencing, and to which the appellant agreed, were summarised by the prosecutor as follows:

> "The facts relating to this matter are that on Saturday morning, 11 May 1996, the defendant now before the Court, Max Murrungun boarded an Ansett flight to Cairns with the sole purpose of buying alcohol and bringing it back to Groote Eylandt to consume with his friends.
>
> In Cairns the defendant purchased bottles of spirits. The defendant put this liquor in his suitcase. The defendant then boarded an Ansett flight back to Groote Eylandt with his case.
>
> Some of his liquor was put in a bag belonging to a co-offender (Mason Lalara), due to all the liquor not fitting in his bag. On arrival at Groote the defendant got off the flight, went to retrieve his bag from the bag trolley but saw Police and left the airport without his baggage.
>
> Police were given the bags by Ansett staff after noticing the cask of wine was exposed. The defendant went back to Angurugu and returned to pick up his bag after Police had left to be told Police had taken his bag.
>
> Police located the liquor. Two of the bags had the defendant's name marked on them.
>
> On Monday afternoon the defendant attended at the police station and took part in a record of interview and admitted the facts."

The learned Magistrate sentenced the appellant to 21 days imprisonment.

The appellant, in his notice of appeal, raised three grounds, namely that:

(a) the sentence was manifestly excessive;

(b) the learned Magistrate erred in giving undue weight to the need for specific and general deterrence; and

(c) the learned Magistrate erred in failing to give due weight to the personal circumstances and antecedents of the appellant.

At the outset of the appeal, Ms Little on behalf of the appellant abandoned the first ground. I observe that having regard to the facts of this case and the maximum penalty (12 months imprisonment or $2000) it could not be suggested that a sentence of 21 days imprisonment was manifestly excessive. This was a premeditated act of the appellant to fly to Queensland solely for the purpose of bringing nearly eight-and-a-half litres of spirits into a restricted area.

Ms Little drew attention to the emphasis which the learned Magistrate gave to what he perceived to be the need for general and personal deterrence. After emphasising the significant role that liquor plays in offences committed on Groote Eylandt and the lengths to which the appellant had gone in flying to Cairns solely for the purpose of bringing back alcohol into the restricted area, the learned Magistrate continued:

> "I think people have to understand if they are going to resort to flying to Cairns and bringing it back in the way that Mr Murrungun did, then they can expect a severe penalty from the court, and I want it to be known that so far as I'm concerned, gaol terms are the appropriate response to people who do that."

He concluded his remarks with a general warning:

> "I think you and other people in the community have to understand if this happens, gaol – you'll be going to gaol."

In his remarks, the learned Magistrate referred to his knowledge and experience of the problems caused by consumption of alcohol at Groote Eylandt. He was entitled to draw upon such experience and in that regard had advantages not available to this Court –

albeit that the problems stemming from alcohol consumption at Groote Eylandt are sufficiently notorious to be a matter of judicial notice.

I do not consider that anything said by the learned Magistrate as to the need for general deterrence can be the subject of legitimate complaint. Similarly, the appellant's record which included three liquor-related offences in restricted areas – including one similar to the present offence – justified the learned Magistrate's conclusion that an element of personal deterrence was required in sentencing for the present offence. Ms Little emphasised that the appellant's last conviction under the *Liquor Act* (and indeed his most recent conviction for any offence) was some five years before the present offence. Certainly he was entitled to some credit for 'going straight' for a substantial period of time, but as the learned Magistrate noted, he was a mature 39-year-old man who must have been fully aware of the consequences of his actions.

I do not consider that the appellant's second ground of appeal has any merit.

In relation to the final ground of appeal, Ms Little submitted that the learned Magistrate failed to draw a proper balance between punishment of the appellant and his rehabilitation. The appellant was an employed man supporting a family. He produced an excellent reference from his employer and had managed to stay out of trouble for five years before the offence. Ms Little submitted that the appellant's mitigation was not dealt with in the manner and depth it demanded. The learned Magistrate, after emphasising the serious nature of the offence and need for general and person deterrence, said:

> "I have taken into account the matters raised by Ms Gibson, in particular this reference, exhibit 1, and the matters she emphasises in that, but I cannot overlook the fact that this man is a mature person who undertook a deliberate disregard with the law to pursue his own gratification and that of his workmates."

I do not consider that the learned Magistrate was obliged to say more in the circumstances of the present case. Clearly, he did have in mind the appellant's personal circumstances, but concluded that personal factors were outweighed by the serious and deliberate nature of the offence by a mature man with previous relevant convictions.

The learned Magistrate Mr B. McCormack who sentenced the appellant was a Stipendiary Magistrate with extensive experience generally and particularly so with regard to offences occurring on Groote Eylandt. Unless there is anything to suggest the contrary, this Court is entitled to presume that an experienced Stipendiary Magistrate both knew and applied appropriate sentencing principles. The fact that such a Magistrate failed to refer expressly to every matter advanced by counsel does not mean that such a matter was either ignored or not given sufficient weight.

I conclude that the sentence here is within the limits of a sound discretionary judgment having regard to all relevant matters. No error in the learned Magistrate's sentencing discretion or in his findings of fact has been established. He has not been shown to have acted upon a wrong principle, nor allowed extraneous or irrelevant matters to affect the result. He has not failed to take into account some material consideration, nor can the sentence be said to be either unreasonable or plainly unjust. In all the circumstances, a custodial sentence was fully merited and nothing in the appellant's personal situation, particularly bearing in mind his previous convictions under the *Liquor Act*, called for such a sentence to be fully or partly suspended.

Accordingly, the appeal must be dismissed and the appellant is required to surrender himself within 14 days to serve the sentence imposed upon him.