

PARTIES: DIRECTOR OF PUBLIC PROSECUTIONS

v

CURCIO, Rocco, KOUKOUVITAKIS,
Christos, PERRE, Francesco,
POULOS, Dimitrios, ROMEO, Tony,
Antonio, SMYRNEOS, Constantinos,
VOTTARI, Domenic

TITLE OF COURT: SUPREME COURT (NT)

JURISDICTION: SUPREME COURT (NT)

FILE NO: No. 30 of 1996

DELIVERED: Darwin, 22 March 1996

HEARING DATES: 14 March, 22 March 1996

JUDGMENT OF: Martin CJ.

CATCHWORDS :

Criminal Law and Procedure - Jurisdiction, practice and procedure - *Ex officio* indictments - Application for warrants of arrest to issue after signing of *ex officio* indictments - Persons authorised to sign - "Crown law officer" - Decision to sign not reviewable.

Criminal Code Act 1994 (NT), s300.
Barton v R (1980) 147 CLR 75, followed.

Criminal Law and Procedure - Jurisdiction, practice and procedure - Warrants - Application for warrants of arrest to issue after signing of *ex officio* indictments - Effect of execution - Respondents resident out of the Territory - Not necessary and inappropriate in many cases to give notice of application for warrant - Application to be made to a Judge of the Court.

Service and Execution of Process Act (Cth) Part v, s86.
Criminal Code Act 1994 (NT), s301.

REPRESENTATION:

Counsel

Applicant: Mr J Adams
Respondent: Not represented

Solicitors:

Applicant: DPP
Respondent: Not represented

Judgment category classification: B
Judgment ID Number: mar96006
Number of pages: 4

mar96006

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 30 of 1996

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS
Applicant

AND:

ROCCO CURCIO, CHRISTOS
KOUKOUVITAKIS, FRANCESCO PERRE,
DIMITRIOS POULOS, TONY ANTONIO
ROMEO, CONSTANTINOS SMYRNEOS,
DOMENIC VOTTARI
Respondents

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 22 March 1996)

A Crown law officer may sign an indictment against any person for an offence whether the accused person has been committed for trial or not (*Criminal Code* s300). In this context "Crown law officer" means the Attorney-General or the Director of Public Prosecutions. In this matter an indictment has been signed by the Director and presented. It charges the respondents to this application, and others, with two counts

of unlawful cultivation of cannabis in the Territory. They are all said to be resident in South Australia.

On 14 March the Director appeared, represented by Mr Adams of counsel, on an application for a warrant to arrest the respondents and have them brought before a Justice of the Peace (s301(1)). None of the respondents are in custody, nor has there been any committal for trial and none of them are held to bail. Upon the warrant being executed on any respondent, the Justice of the Peace may commit him to prison until he can be tried on the indictment or may, in a proper case, admit him to bail to attend to be tried on the indictment (s301(2)). Since the respondents are resident out of the Territory, the Director proposes to rely on Part V of the *Service and Execution of Process Act* (Commonwealth) to affect their apprehension (see definition "warrant"). Those provisions enable the apprehension to take place, and provide for the respondent apprehended to be taken before a Magistrate there, and subject to requirements of those statutory provisions, the Magistrate may order that he be remanded on bail to appear at, or taken in custody to, such place within the Territory as the Magistrate orders. Any such order may be reviewed in the Supreme Court of South Australia (s86). Assuming the order of the Magistrate is carried into effect, further proceedings on or in respect of the indictment would take place in this Court.

The indictment is commonly known as an *ex officio* indictment, and it would seem that the decision to sign it is not reviewable by this Court (*Barton v R* (1980) 147 CLR 75 at pp94-5), and therefore it is not necessary that there be any evidence produced as to the Crown case upon the indictment when the application for the warrant is made.

Counsel instructed on behalf of the respondents has appeared on previous occasions when the matter was mentioned before the Court. He was aware of the date upon which the application for the warrant was to proceed. He did not appear on that occasion. There is other evidence to indicate that some of the respondents or their legal representatives in South Australia were also aware of that date. Indeed, the Director had caused proceedings to be commenced by way of Originating Motion seeking the orders for the issue of the warrants, and some of the respondents had been served with a copy of it, along with a copy of an affidavit in support of the application.

I can understand the Director's wishing to be fair by the giving of notice of the application, but it does not seem to me that it is necessary to do so. Leaving aside the procedure which was adopted, it seems inappropriate, at least in many cases, that notice be given of the application at all.

The whole purpose of the warrant, issued after an *ex officio* indictment has been signed, is to secure the attendance of the alleged offender before this Court for further proceeding upon the indictment. If that person is not within the Territory, then the procedure under the Commonwealth Act must be taken. In the ordinary course of things notice is not given of an act which is contemplated which might lead to an arrest and the bringing of a person before a Court to be tried for a criminal offence. The hazards to effective law enforcement are obvious.

Furthermore, s301 does not require an application to be made to the Court . It is to be made to a Judge of the Court, which may well mean that the application is dealt with in camera.

Having considered the matter, noting the indictment which appears to be valid on the face of it and signed by the Director, and being satisfied that the pre-conditions have been met, I will issue the appropriate warrants on their being presented by the Director for that purpose.