PARTIES:	JEWELL, Sammy
	v
	HAYWARD, Gillian
TITLE OF COURT:	COURT OF APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL FROM SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	AP 7/96
DELIVERED:	4 March 1997
HEARING DATES:	4 March 1997
JUDGMENT OF:	Martin CJ, Kearney & Priestley JJ

CATCHWORDS:

Criminal Law and Procedure - Appeal - Sentence - Juvenile offender - Prior record - Penalty with no conviction imposed by Juvenile Court - Record taken into account - Contrary to s90 *Juvenile Justice Act* (1983) NT

Criminal Law and Procedure - Jurisdiction, Practice and Procedure - Remittal to Court of Summary Jurisdiction for rehearing before another Magistrate

REPRESENTATION:

Counsel:

Appellant:	David Grace QC
Respondent:	Ron Noble with Gina O'Rourke

Solicitors:

Appellant:	NT Legal Aid Commission
Respondent:	Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	mar97010
Number of pages:	3

mar97010

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

No. AP 7/96

BETWEEN:

SAMMY JEWELL
Appellant

AND:

GILLIAN HAYWARD
Respondent

CORAM:

EX TEMPORE REASONS FOR JUDGMENT

(Delivered 4 March 1997)

In this matter, the Court has an appeal on the basis that in proceedings both before the learned Magistrate and in the Supreme Court the provisions of s90 of the *Juvenile Justice Act* (1983) NT were not paid regard to by either of the parties to the proceedings or the lower court or the Supreme Court on appeal. That provision is that where a juvenile has been found by a court to have committed an offence but no conviction was recorded by the court, no evidence or mention of the offence may be made to or the offence taken into account by a court other than the Juvenile Court.

We take it into account only for the purposes of disposing of the appeal as we must. Before his Worship, the record of the appellant which showed that he had suffered a penalty without the Juvenile Court, before which he then came, in November 1992, having proceeded to conviction. In the course of the proceeding before the Court of Summary Jurisdiction, without apportioning any particular responsibility for it, the fact of that record was mentioned and his Worship received the record as an exhibit and clearly enough took what was on it into account in regarding the appellant here as not then being a first offender. That contaminated his reasons and clearly the penalty which he then imposed.

Before the Supreme Court, his Honour, the Judge on appeal, drew immediate attention to the matter to counsel for the appellant before him, who was taking other grounds, but counsel did not proceed to amend the grounds of appeal then before his Honour. It not having been pressed by counsel, his Honour, I think, must have felt that in some way he was entitled to continue with the matter notwithstanding what I have said in relation to s90. He also took it into account in his reasons. He said: "It was not contended that the learned Magistrate was wrong not to treat the appellant as a first offender." I suppose not having a ground of appeal before him, his Honour felt he was entitled to approach it in that way, but I think the better view, with respect, would have been for his Honour to look at what s90 provides and say: "Well, before me, I can't take it into account either and, in any event, his Worship

clearly transgressed by taking account of matters that were by statute regarded as irrelevant."

In the circumstances the appeal must be upheld. As to disposition, I would propose that it be remitted to the Court of Summary Jurisdiction to be dealt with afresh.

The Court is of the view that leave to appeal be granted, that the appeal be allowed, that the decision of the Supreme Court be quashed, that the conviction be quashed and the sentence set aside and the case be remitted to the Court of Summary Jurisdiction for re-hearing before another Magistrate. So ordered.
