

Campbell v The Queen [2004] NTSC 56

PARTIES: ALFRED CAMPBELL

v

THE QUEEN

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: SCC 9904056

DELIVERED: 14 October 2004

HEARING DATES: 30 September 2004

JUDGMENT OF: RILEY J

CATCHWORDS:

CRIMINAL LAW – Application by defendant – pursuant to s 112 of Sentencing Act – whether failure to impose sentence in accordance with law - whether learned judge should re-open proceeding and correct what was submitted to be a sentencing error.

STATUTORY INTERPRETATION – Sentencing of Juveniles (Miscellaneous Provisions) Act s 7 – Juvenile Justice Act s 35

Legislation:

Sentencing Act s 112

Sentencing of Juveniles (Miscellaneous Provisions) Act s 7

Juvenile Justice Act s 35, s 38

Held:

Application dismissed

REPRESENTATION:

Counsel:

Applicant: B. Cassells
Respondent: J. Karczewski QC

Solicitors:

Applicant: North Australian Aboriginal Legal Aid
Service
Respondent: Office of the Director of Public
Prosecutions

Judgment category classification: B
Judgment ID Number: ril0423
Number of pages: 5

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

Campbell v The Queen [2004] NTSC 56
No SCC 9904056

BETWEEN:

ALFRED CAMPBELL
Applicant

AND:

THE QUEEN
Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 14 October 2004)

- [1] This matter comes before the Court by way of application pursuant to s 112 of the Sentencing Act to re-open the proceeding and correct what is submitted to be a sentencing error.
- [2] The applicant, who was born on 6 February 1982, committed the offence of having sexual intercourse with a young girl without her consent. The offence occurred on 10 February 1999. On 1 June 2000 the Sentencing of Juveniles (Miscellaneous Provisions) Act came into force making provision for the age of juveniles to be raised from 17 to 18 years for the purposes of the Juvenile Justice Act and the Sentencing Act.

[3] On 14 February 2002 the applicant was convicted of the offence following a trial by jury. On 18 February 2002 he was sentenced to imprisonment for a period of eight years and six months with a non-parole period of six years. The maximum penalty for the offence is imprisonment for life.

[4] Section 7 of the Sentencing of Juveniles (Miscellaneous Provisions) Act 2000 is in the following terms:

“7. Offences committed when 17 years of age – offender awaiting sentence.

(1) On the commencement of this Act, if –

(a) a court (other than the Juvenile Court) has found an offender guilty of an offence committed when the offender was 17 years of age; and

(b) the court has not sentenced the offender in respect of the offence,

the offender must be sentenced by the Juvenile Court.

(2) On the commencement of this Act, if a person has been charged with an offence committed when the person was 17 years of age and the offence is to be dealt with by a court (other than the Juvenile Court) the court must refer the matter to Juvenile Court to be dealt with by the Juvenile Court.

(3) The Juvenile Court has jurisdiction in respect of a matter that is required to be dealt with by it in accordance with subsection (1) or (2) and the *Juvenile Justice Act* applies in relation to the matter as if the proceedings in respect of the matter had been brought under that Act.”

- [5] At the time of sentencing it seems there was no reference made to the provisions of the Sentencing of Juveniles (Miscellaneous Provisions) Act or to the prospect that the applicant should have been treated as a juvenile for the purposes of sentencing.
- [6] The applicant submits that he should have been dealt with by the Juvenile Court (which includes the Supreme Court exercising its jurisdiction under or in pursuance of the Juvenile Justice Act) and that, by virtue of s 7(3) of the Sentencing of Juveniles (Miscellaneous Provisions) Act, the court had jurisdiction to deal with the matter notwithstanding the terms of s 35 of the Juvenile Justice Act. Section 35 is in the following terms:

“Subject to sections 36, 37 and 38, where a juvenile is charged before the Court with an offence which, if committed by an adult, is punishable by imprisonment for 12 months or longer, other than an offence punishable by imprisonment for life, the Court shall hear and determine the matter in a summary manner.”

- [7] It was further submitted by the applicant that the maximum penalty available to be imposed on the applicant was detention/imprisonment for a period of 12 months. As Mr Cassells, who appeared on behalf of the applicant, conceded, this would be an extraordinary consequence of the amending provisions but one, he says, that follows the plain meaning of the words of the section.
- [8] The Sentencing of Juveniles (Miscellaneous Provisions) Act was introduced to raise the upper age of juveniles from 17 to 18 years. It was to provide to those in that age bracket the benefits of the Juvenile Justice Act which

previously only applied to those who had not attained the age of 17 years. The provisions of Part 3 of the Act (which include s 7) were intended to cover those who were in the system at the time of change. They are transitional provisions. They are not provisions intended to have the far-reaching consequences that follow the interpretation for which the applicant contends. If the applicant be right, a person falling within the scope of s 7 of the Act would not face a maximum penalty of life imprisonment for offences that would otherwise carry that maximum penalty but, rather, would face a maximum of 12 months detention/imprisonment. Further, if the applicant's argument be correct, juveniles would be deprived of the discretion allowed the Juvenile Court to decline to deal with a charge in a summary manner but rather to deal with the charge in accordance with the provisions of the Justices Act relating to indictable offences as provided for in s 38 of the Juvenile Justice Act.

- [9] If it was the intention of the legislature to effect such dramatic changes to the relevant regime it would have done so in quite specific and clear terms and not as an indirect consequence of a transitional provision and in relation only to the limited number of offenders to which the provision applies.
- [10] Section 7 is a transitional provision and must be read in that context. It is designed to facilitate the legislative transition from a juvenile being defined as a child who has not attained the age of 17 years to one who has not attained the age of 18 years. Seen in that context s 7(2) is to be given a narrow application. In my view the reference to an "offence" within that

section is to an offence over which the Juvenile Court would have had jurisdiction had the amending Act been in effect at the date of the offending. It does not apply to offences that are excluded from the operation of the Juvenile Justice Act by virtue of s 35 of that Act.

[11] Similarly offences which carry a maximum penalty of imprisonment for life are not included within “a matter” referred to in s 7(3) of the Act because such offences are also excluded by operation of s 35 of the Juvenile Justice Act. As the respondent to the application submitted, s 7(3) has the effect of regularising proceedings which, because of the amendment, may not have been commenced or conducted in accordance with the Juvenile Justice Act. It does not contemplate or provide for a significant alteration to the jurisdiction of the Juvenile Court.

[12] I do not accept the submissions made on behalf of the applicant in this regard. It was not submitted that the sentence imposed was otherwise not in accordance with the law or that there was a failure to impose a sentence that the court legally should have imposed.

[13] No basis for re-opening the proceedings in accordance with s 112 of the Sentencing Act has been established and the application must be dismissed.
