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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

No. 25 of 1993

IN THE MATTER of the Justices
Act
AND IN THE MATTER of an appeal
from a decision of the Court
of Summary Jurisdiction at
Alice Springs

BETWEEN:

EVELYN MAY CADY
Appellant

AND:

SUZANNE SMITH
Respondent

CORAM: KEARNEY J

REASONS FOR DECISION

(Delivered 16 July 1993)

This is an appeal against a sentence imposed on the appellant by the Court of Summary Jurisdiction at Alice Springs.

The background

It appears that on 27 April 1993 the appellant pleaded guilty before the Court to charges of having committed 8 offences. Five of those charges, consisting of 2 under s239(1)(b) of the Social Security Act 1947 and 3 under s1350 of the Social Security Act 1991, were set out in

a Summons based on the respondent's Complaint of 27 November 1992. A Complaint invokes the jurisdiction of the Court under s64 of the Justices Act to hear and determine simple offences; see s49 of the Justices Act. It seems, however, that these were indictable offences - see s4G of the Crimes Act 1914 (C'th) - though they were capable of being dealt with summarily, under that Act. The charges under s239(1)(b) of the 1947 Act were for obtaining unemployment benefits for 2 consecutive 2 week periods in October-November 1990, during which she had earned income which she did not declare. Two of the charges under s1350 of the 1991 Act were similar: they entailed a contravention of 1347(b) of that Act in that for two 2-week periods in September-October 1991 she had obtained Job Search Allowances although she had earned income which she did not declare. The third charge under s1350 was for contravening par1344(1) of the 1991 Act, in that on 9 December 1991 when claiming a Job Search Allowance she falsely stated that she had last worked on 7 December 1991 when she was in fact still employed.

The other 3 charges were also laid under s1350 of the 1991 Act. They were set out in a separate Summons issued upon an Information laid on 27 November 1992 by the respondent. Informations are used when indictable offences are suspected to have been committed; such charges are punishable summarily in certain circumstances. These charges involved contraventions of par1347(b) of the 1991 Act in that she had obtained 3 Job Search Allowances in consecutive periods totalling some 30 days in December

1991 - January 1992, during which she had earned income which she did not declare.

No transcript is available of the proceedings on 27 April 1993 but a transcript is available of the adjourned hearing on 11 May. After hearing submissions in mitigation of punishment, his Worship proceeded to sentence. Before doing so, he enquired of counsel whether he could pass a single sentence in respect of all 8 offences, even though some had been the subject of a Complaint and others the subject of an Information. Both counsel, neither of whom appeared before me, indicated that such a course was permissible. His Worship then imposed a single sentence of 9 months imprisonment in respect of all 8 offences, and directed that the appellant be released after serving 1 month provided she had entered into a supervised bond in the sum of \$500 to be of good behaviour for 18 months.

The appeal

The appellant appealed on the same day, relying on 5 grounds. A further 3 grounds were added, by leave, on 15 July when the appeal came on for hearing before me.

Mr Barbaro of counsel for the appellant relied on one ground only, viz:-

"3. That the learned Magistrate erred in law in imposing one sentence in respect of all offences charged when those offences were not against the same provision of a law of the Commonwealth contrary to Section 4K of the Crimes Act (Commonwealth)."

Subsections 4K(3) and (4) of the Crimes Act provide:-

"(3) Charges against the same person for any number of offences against the same provision of a law of the Commonwealth may be joined in

the same information, complaint or summons if those charges are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character.

- (4) If a person is convicted of 2 or more offences referred to in subsection (3), the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence." (emphasis mine)

It is clear from the combined effect of these provisions that a single sentence for multiple offences may be imposed only where those offences are "against the same provision of a law of the Commonwealth". Here the 8 charges related to offences under 2 different provisions of 2 different Commonwealth Acts. It is true that s1353 of the Social Security Act 1991 provides that where a person is convicted of more than one offence against s1350 the Court may impose a single penalty for all those offences; but that was not the position here, since convictions for offences under s239(1)(b) of the 1947 Act were also the subject of the single penalty. It is unfortunate that in May counsel had inadvertently misled his Worship as to whether he could impose a single sentence and thereby had led him into an approach on sentence not permitted by the Crimes Act. Mr Stirk of counsel for the respondent rightly conceded that the appeal must succeed on this fairly technical ground. The Court had no jurisdiction in the circumstances to impose the single sentence which it had purported to impose; that sentence must therefore be quashed and set aside.

The disposition of the appeal

The parties are at issue as to the disposition of the appeal. Mr Barbaro submitted that the case should be remitted to the Court of Summary Jurisdiction for sentencing. He stressed that the total overpayment in respect of all charges was under \$1300 and that offences of this type are commonly dealt with by Courts of Summary Jurisdiction, the Magistrates thus being in a much better position than this Court to determine the appropriate punishment. Mr Stirk submitted that this Court should now proceed to sentence, on the basis that it was in as good a position to sentence the appellant, as it had been in Slattery v Davis (unreported, Kearney J, 19 February 1993).

It is clear that either course is open, under s177(2) of the Justices Act. On balance, I think it preferable in this case to remit the case to the Court of Summary Jurisdiction for sentencing. The general principles applicable to sentencing for these types of offences in this jurisdiction are set out in Slattery v Davis (supra), especially at pp22-3. No doubt the usual useful assistance by way of a schedule of sentences for this offence (including the sentences schedule handed to this Court on 15 July) will be supplied to the Court of Summary Jurisdiction.

Order

The appeal is upheld. The sentence imposed on 11 May 1993 is quashed and set aside. The case is remitted to the Court of Summary Jurisdiction, for sentencing.