

Cordwell v Westphal [2015] NTSC 25

PARTIES: CORDWELL, Michael Anthony

v

WESTPHAL, Lindsay

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION

FILE NO: JA 4 of 2015 (21455113)

DELIVERED: 1 May 2015

HEARING DATES: 1 May 2015

JUDGMENT OF: RILEY CJ

APPEAL FROM: COURT OF SUMMARY JURISDICTION

CATCHWORDS:

CRIMINAL LAW – Justice’s appeal – Appeal against sentence – sentence manifestly excessive – out of proportion to offences – sentencing discretion not to be disturbed – presumption of no error – no error identified by appellant – appeal dismissed

CRIMINAL LAW – Justice’s appeal – counsel failure to convey information to the Court – not significant information for sentence – would not have led to a different outcome – no substance in the ground of appeal– appeal dismissed

REPRESENTATION:*Counsel:*

Appellant:	Self-represented
Respondent:	R Micairan

Solicitors:

Appellant:	Self-represented
Respondent:	R Micairan

Judgment category classification: C

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

Cordwell v Westphal [2015] NTSC 25
JA 4 of 2015 (21455113)

BETWEEN:

MICHAEL ANTHONY CORDWELL
Appellant

AND:

LINDSAY WESTPHAL
Respondent

CORAM: RILEY CJ

REASONS FOR JUDGMENT
Ex Tempore
(Delivered 1 May 2015)

Introduction

- [1] The appellant is self-represented.
- [2] On 17 December 2014 the appellant was sentenced in the Court of Summary Jurisdiction to imprisonment for a period of three years with a non-parole period of 18 months for a range of offences committed in February and March 2013. He appeals on the grounds that:

(a) the sentence was manifestly excessive; and

(b) his counsel did not convey to the sentencing magistrate that the vehicle the subject of count 19 was recovered when the appellant informed the rental company of the vehicle's location.

The offending

- [3] The appellant pleaded guilty to 19 offences each of which involved dishonesty. On 26 February 2013 he unlawfully came into possession of a wallet. He subsequently used a Northern Territory driver's licence and an ANZ access debit card from the wallet to obtain goods and services. It is not necessary to set out the circumstances of each of the offences. In general terms he approached a retailer and purchased goods or obtained services by deceiving the vendors into believing he was the lawful holder of the credit card. On occasions he used the driver's licence for this purpose. In this way he obtained alcohol, fuel, cigarettes and two mobile phones along with a contract for mobile phone services. He ran up calls and obtained other services under that contract to the value of approximately \$2700.
- [4] In March 2013 the appellant unlawfully came into possession of another credit card in the name of a different victim. By deception he used that card to obtain three 200 L drums of diesel and a hand pump.
- [5] At about the same time he hired a Toyota Land Cruiser utility using the details from the recently acquired credit card and claiming he was from an earthmoving company. He signed the rental agreement for the vehicle using the details from the stolen driver's licence. The vehicle was valued at \$45,000 and, contrary to the agreement, he drove it to South Australia. The vehicle was not recovered until June 2013.

- [6] The appellant was eventually located whilst in a prison in New South Wales and was extradited to the Northern Territory in November 2014. The total value of property and services obtained by deception was \$50,973.17. He also attempted to obtain property and services to the value of \$214 by deception.
- [7] The Court of Summary Jurisdiction was informed that the appellant had a significant criminal history in South Australia, Victoria and New South Wales. His criminal history included convictions for passing valueless cheques, theft, obtaining a benefit by deception, making off without payment, making a false instrument, recklessly causing serious injury, assaulting police, assault occasioning bodily harm and dangerous driving causing death.
- [8] The appellant has been dealt with by the courts in many different ways over a long period of time. He has been given good behaviour bonds, fines, short periods of imprisonment and substantial periods of imprisonment. He continued to offend.
- [9] His Honour thought it appropriate to impose an aggregate sentence because the offences constituted a course of conduct and all of the charges were laid on the one information. No complaint is made in this regard. The sentencing magistrate was informed of the circumstances of the appellant and again no complaint is made in this regard. A discount of 25% was allowed for the appellant's plea of guilty.

The Appeal

- [10] In the sentencing proceedings the learned magistrate was informed that the appellant did not advise the car rental company of the whereabouts of the vehicle. The appellant submitted that he had done so albeit quite some time later. He complained that his counsel did not provide this information to the Court of Summary Jurisdiction. This was not a significant factor in the sentencing process and, in my opinion, would not have led to a different sentence being imposed. There is no substance in this ground of appeal.
- [11] The principal ground of appeal was that the sentence was manifestly excessive. The principles applicable to such a ground of appeal are well known. It is fundamental that the exercise of the sentencing discretion is not disturbed on appeal unless error in that exercise is shown. The presumption is that there is no error. An appellate court does not interfere with the sentence imposed merely because it is of the view that the sentence is excessive. It interferes only if it be shown that the sentencing judge was in error in acting on a wrong principle or in misunderstanding or in wrongly assessing some salient feature of the evidence. The error may appear in what the sentencing judge said in the proceedings or the sentence itself may be so excessive as to manifest such error. In relying upon this ground it is incumbent upon the appellant to show that the sentence was not just excessive but manifestly so. He must show that the sentence was clearly and obviously, and not just arguably, excessive.

[12] The appellant did not identify any error on the part of the sentencing magistrate but submitted that the sentence was out of proportion with the offending. In my opinion this was serious offending committed by a person with a history of similar offending. The amounts involved were significant. There were 19 separate offences. The offending was not opportunistic but rather planned and carried out in a brazen way over a period of time. It involved multiple victims and took advantage of the faith and trust of those people who were merely conducting their business. In all the circumstances I see no error on the part of his Honour and I do not regard the sentence as being manifestly excessive.

[13] Accordingly, the appeal is dismissed.
