Pungatji v Woodcock [2003] NTSC 31

PARTIES:	PUNGATJI, PAUL STANLEY
	v
	WOODCOCK, TANYA
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL FROM COURT OF SUMMARY JURISDICTION EXERCISING TERRITORY JURISDICTION
FILE NO:	JA 121 OF 2002 (20217426)
DELIVERED:	2 April 2003
HEARING DATES:	1 April 2003
JUDGMENT OF:	RILEY J

REPRESENTATION:

Counsel:

Appellant:	D. Woodroffe
Respondent:	T. Austin

Solicitors:

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

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Pungatji v Woodcock [2003] NTSC 31
No. JA 121 OF 2002 (20217426)

IN THE MATTER OF the *Justices Act*

AND IN THE MATTER OF an appeal against sentence handed down in the Court of Summary Jurisdiction at Darwin

BETWEEN

PAUL STANLEY PUNGATJI
Appellant

AND:

TANYA WOODCOCK
Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 2 April 2003)

[1] On 18 December 2002 the appellant pleaded guilty to having breached a domestic violence order contrary to s 10 of the Domestic Violence Act. The maximum penalty for a first offence under that section is a fine of $2000 or imprisonment for six months. The appellant was sentenced to imprisonment for a period of 28 days. He has now appealed on two grounds, namely that the sentence was manifestly excessive in all the circumstances and that his Worship gave too much weight to general deterrence over rehabilitation.

[2] The circumstances of the offending were agreed. On 15 October 2002 the appellant was served with a domestic violence order issued pursuant to s 6 of the Domestic Violence Act. The terms of the order were explained to him at that time. On 23 October 2002 the matter came before the Court of Summary Jurisdiction at Nguiu when, pursuant to s 4 of the Domestic Violence Act, the order was confirmed. The appellant was present in court and was aware of the terms and conditions of the order.

[3] On 20 November 2002 the appellant and his victim were involved in an argument at their home. The argument became heated and the appellant was shouting and threatening the victim. Fearing for her safety she left and attended at the house of her auntie. The victim and her auntie boarded the Nguiu Community bus and, as it was pulling away, the appellant ran to the bus yelling and screaming at the victim. He boarded the bus and physically dragged her from it. Once off the bus he struck her several times in the face and upper body area. He then pushed her to the ground and physically dragged her back into their home.

[4] Once inside the home the appellant attempted to strangle the victim by placing his right arm around her neck and applying pressure. He dragged her into the shower area of the residence and continued to threaten her until she stopped crying and screaming.

[5] A short time later police arrived and the appellant was arrested. He took part in an electronically recorded interview. When asked if he was aware of

the conditions of the restraining order he replied "Yes". When asked why he had assaulted the victim he stated, "If she didn't go on the bus then things wouldn't happen". When asked why he was shouting and threatening her he said, "It was about this mother-fucker". When asked if he knew what he did was wrong he replied, "Yes".

[6] In submissions made on behalf of the appellant, his Worship was informed that the appellant and his victim have three children together. The arguments were said to have centred upon the appellant being upset by a man claiming that the victim was one of his wives and the victim failing to deny that claim.

[7] In sentencing the appellant the learned Magistrate noted the early plea of guilty and the admissions made to police. He took into account each of the matters put to him as favourable to the appellant. He specifically referred to the appellant's conduct in co-operating with police, making frank admissions and removing himself from the area in order to avoid further offending. His Worship observed that the appellant was of good character and that he did not have previous convictions for violence. There is no complaint that the learned sentencing Magistrate failed to take into account all the positive matters relating to the appellant. Rather, the complaint is that he failed to expressly address the issue of rehabilitation and the prospect of suspending the whole or part of the sentence to be imposed in light of those positive matters. It was submitted that he allowed considerations of general deterrence to subsume the necessary consideration

of matters relevant to rehabilitation. Further it was submitted that the sentence was, in any event, manifestly excessive.

[8] His Worship stated that this offence was "one of the most serious cases of breaching a domestic violence order that I have ever heard of because your acts were so sustained and so numerous". He described the incident as a "horrible event". He went on to describe the importance of domestic violence orders and the necessity to treat breaches of such orders as a serious matter. He then sentenced the appellant in the following terms:

> "There are, in my view, notwithstanding your good record and your pleas of guilty, for reasons of general deterrence that apply to so serious a case as this – and as I said this is indeed a very serious case – I can't see any sentence to impose in so serious a case as this apart from one of actual imprisonment and I'm going to convict you of this offence, sentence you to 28 days imprisonment and order you to pay a $40 victim levy."

[9] The principles applicable to an appeal such as this are well known. The exercise of the sentencing discretion will not be 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 insufficient or excessive. It interferes only if it is shown that the sentencing Magistrate 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 Magistrate said in the proceedings or the sentence may be so excessive or inadequate as to manifest such error. The sentence itself may

afford convincing evidence that in some way the exercise of the discretion has been unsound.

[10] The Domestic Violence Act permits the making of restraining orders in relation to domestic violence. Such orders are, inter alia, designed to protect a person in a domestic relationship with a defendant from behaviour that is likely to lead to a breach of the peace, for example by causing that person to reasonably fear violence or harassment against himself, herself or another.

[11] In "special circumstances" the Act permits a member of the police force to make a telephone application to a Magistrate for such an order. That is what occurred in this case on 15 October 2002. Further, in identified circumstances, the Act permits a police officer to remove a person in a domestic relationship and take that person into custody whilst an application for a restraining order is made.

[12] The terms of the Act make it clear that it was introduced to meet an identified need in the community. It is designed to provide protection for people in domestic relationships in circumstances where there is a reasonable fear of violence or harassment. It is essential to the effective operation of the Act that those who may seek protection under its terms have confidence that restraining orders made are backed by penalties that will be applied in the event of a breach. Likewise, those who may be the subject of a restraining order must know that a failure to comply with the terms of the

order will lead to a sanction. Issues of personal and general deterrence are likely to be of importance where a breach occurs and a person is before the court for sentence.

[13] In the present case the learned Magistrate clearly and correctly accorded emphasis to both personal and general deterrence. In relation to general deterrence he noted that any breach of such an order shakes the confidence not only of the direct victim, but also of the wider community, in the efficacy of such orders.

[14] Counsel for the appellant raised with his Worship the prospect of a non-custodial disposition but his Worship was unimpressed by that submission. In my opinion a fair reading of the remarks of his Worship makes it clear that he considered the relevant matters, he looked at whether a non-custodial sentence was appropriate but felt that a period of actual imprisonment was called for. In so doing, he necessarily rejected the option of a wholly suspended sentence.

[15] The appellant complains that his Worship failed to expressly address the subject of a partially suspended sentence. It has been said by appellate courts on many occasions that it is not necessary for Magistrates to recite in their reasons every matter which they have considered. An appellate court is entitled to assume that the Magistrate has considered all matters which are necessarily implicit in the conclusions he or she has reached; *Bartusevics v Fisher* (1974) 8 SASR 601 at 602, *Mawson v Nayda* (1995) NTSC 113. Of

course the sentencing remarks must provide at least a succinct account of the main reasons for decision; *Hill v Arnold* (1976) 9 ALR 350 at 356-357.

[16] In my view it must be assumed that the learned Magistrate in this case, a very experienced Magistrate, considered the alternative dispositions available to him. He was of the view that an actual period of imprisonment was called for. He concluded a term of actual imprisonment for a period of 28 days was appropriate. The tenor of his remarks make it plain that he rejected any alternative disposition including suspending part of the sentence because of the serious nature of the offending.

[17] I reject the submission that the learned Magistrate gave too much weight to general deterrence over rehabilitation. The positive matters put on behalf of the appellant are reflected in the sentence of imprisonment for 28 days. Had those positive matters not been present a greater period of imprisonment might have been expected. In my view error has not been demonstrated and the sentence was not manifestly excessive. The appeal must be dismissed.

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