Sloan v Rennie [1999] NTSC 31
JA 91 of 1998

PARTIES:	SLOAN, Rebecca Marie v RENNIE, Robert William
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	JA 91 of 1998
DELIVERED:	9 April 1999
HEARING DATES:	15 March 1999
JUDGMENT OF:	MARTIN CJ.

CATCHWORDS:

CRIMINAL LAW AND PROCEDURE

Appeal against severity of sentence and estreatment of bail – from Court of Summary Jurisdiction – consideration of irrelevant circumstance when sentencing – Appellant residing outside the jurisdiction not relevant to answering bail conditions.

Justices Act 1928 (NT), s 163
Bail Act 1982 (NT), s 35
Sentencing Act 1995 (NT), s 8

Robertson v Flood (1992) 111 FLR 171, considered.
Gumantjara v Harris (1992) 109 FLR 400, considered.
Birdwood v Murphy, unreported, NT Supreme Court, 3 September 1997, Mildren J, considered.

REPRESENTATION:

Counsel:

Appellant:	Michael Jones
Respondent:	Alexis Fraser

Solicitors:

Appellant:	NAALAS
Respondent:	DPP

Judgment category classification:	B
Judgment ID Number:	mar99008
Number of pages:	9

mar99008
IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

Sloan v Rennie [1999] NTSC 31
No. JA91 of 1998

BETWEEN:

REBECCA MARIE SLOAN
Appellant

AND:

ROBERT WILLIAM RENNIE
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 9 April 1999)

[1] The appellant asserts that a sentence by way of a fine for $180 imposed upon her by the Court of Summary Jurisdiction sitting in Jabiru on 13 October last year was manifestly excessive. She further says, in the grounds of appeal, that in ordering forfeiture of bail the learned stipendiary Magistrate gave insufficient weight to the circumstances requiring the appellant to remain in Sydney.

[2] The appellant was charged for that on 28 May 1998 at Jabiru she did hinder a member of the police force in the execution of his duty contrary to s 159 of the *Police Administration Act* 1979 (NT). The facts put forward by the prosecutor before his Worship were that she was part of a large group of

protestors that attended near the Jabiluka mineral lease in an effort to build obstructions at the entrance gate. The appellant stood by as police spoke to her friends, and upon seeing two of them being arrested, she followed the arresting police to the police vehicle, yelling at them and demanding the release of her friends. As police attempted to place her friends in the vehicle, the appellant grabbed hold of the arm of one of them and tried to pull her away. The police told her to leave the area, but she refused and continued to stand at the rear of the vehicle not allowing police to fully open the cage door. The appellant was pushed away from the car by police, her friends placed in the rear of the vehicle and the appellant was then arrested for hindering the police.

[3] It would appear that she entered into a recognizance on her own behalf in the sum of $500 to secure her release on bail and attendance before the Court on 29 September 1998. She did not attend, and a warrant was issued for her arrest but to lie until 13 October. She did not appear on 13 October in person, but was represented by a solicitor.

[4] In the plea in mitigation to the charge, the appellant's solicitor informed the Court that she had become involved because she wanted to know why her friends were being arrested. She alleged that the police declined to answer her question, and she persisted in the manner which led to her offending.

[5] A number of references were tendered on her behalf which portrayed her involvement in voluntary work in Sydney, including distribution of fruit and

vegetables to people who have difficulty shopping due to disability, child care and running a community book store. The references attested to her good character. She had no prior convictions. She was at the time part way through studying for a degree in social science at a university in Sydney.

[6] Amongst the "references" was one from a medical practitioner which also certified that she was then currently unable to travel to Darwin because of weekly medical treatments being undertaken. No submissions were made on her behalf in relation to the failure to appear.

[7] It was put to his Worship on her behalf that she could be dealt with by way of fine without conviction, it being put that she was on unemployment benefits of approximately $300 a fortnight. It was said that a conviction may hinder her future employment prospects and that it was not a serious example of this type of offence. His Worship replied:

> "I know, but it's out in the middle of an isolated area where the police are probably greatly outnumbered. She was surrounded by a group of her friends. It's not just words she's used to hinder the police, she's grabbed the person and tried to pull them away. I think there needs to be a conviction".

[8] Reiterating much of what had been put in the plea in response to that, her solicitor said that police were able to arrest the people and there was no serious disturbance at the site and no violence offered to the police. He put that it was a matter of a few seconds interruption to the policeman's duties and that it did not deserve a conviction.

[9] His Worship dealt with the matter immediately, recalled the warrant and vacated it, noticed her failure to appear on a previous occasion and on that day and her plea of guilty. He declined to accept the reason for not appearing on bail, noting that the treatments were weekly, and there seemed to be no reason, apart from possibly a financial one, as to why she was not in Jabiru. Taking into account her financial position, he ordered: "$300 bail be forfeited".

[10] His Worship noted the maximum penalty for hindering police was six months imprisonment or $1,000 fine and proceeded:

> "The defendant was part of a large group of protesters. The police were executing their duties, she hindered the police in that she attempted to pull a person away from the police, while they were trying to put her in the back of the cage. She also blocked them opening the back of the cage and therefore made their duties a lot more difficult."

[11] That was all common ground. His Worship went on:

> "Also given that it was in an isolated area and I believe a large number of protesters about, it could put the police in some position of danger. They could well have been outnumbered and overrun. I think it is a serious matter and one which does call for a conviction".

[12] His Worship proceeded accordingly.

[13] It will be noted that it was part of the prosecution case that the offence took place in what was described as an isolated area. However, nothing was put as to the number of protesters in the vicinity, nor as to the prospect of police being placed in a position of danger. There was nothing before his Worship

as to the numbers of protesters or the numbers of police, or any reaction by the protesters not directly involved in the happenings concerning the appellant.

[14] There can be no objection to a court taking into account those elements going to aggravate the crime such, as those referred to by his Worship, but there must be a sufficient factual foundation for it. (Compare *Clark v Trenerry*, unreported Martin CJ, 17 January 1996). The appellant there had been convicted after trial for assaults upon police arising in the course of, and after a series of incidents which took place in the early hours of the morning on a street adjacent to a nightclub in Darwin. He, and upwards of thirty others, were on the footpath on the street having just departed from the nightclub. The appellant and some of the others were affected by alcohol. Abusive and objectionable language had emanated from the group and the appellant. Based on the findings made on the evidence before him, and his experience on the bench, his Worship said:

> "It is a circumstance of aggravation that this assault took place in a situation where the police were particularly vulnerable, bearing in mind the numbers of people present, many of whom were behaving in an outrageous manner likely to inflame others. There is thus a need for general deterrence."

[15] Reference might also be made to the judgment of Mildren J. in *Robertson v Flood* (1992) 111 FLR 177 and by Kearney J. in *Gumantjara v Harris* (1992) 109 FLR 400.

[16] In this case the learned Magistrate erred in taking into account the matters which had not been proven or admitted in the proceedings before him and the conviction and the sentence must be set aside.

[17] Before proceeding to consider the appropriate penalty to be imposed upon the appellant, it is also necessary to take into account the objections raised to the forfeiture of bail. Although those proceedings came forward in the form of a notice of appeal and should have been by way of review under the *Bail Act* 1982 (NT), no objection was made to that procedure, and the matter went ahead on the basis that it was properly before the Court. Nothing further was sought to be put before this Court than was before his Worship, which was the certificate from the doctor referred to above. I agree with his Worship that it had provided no basis upon which the Court might excuse the appellant from the obligation to attend in accordance with her undertaking.

[18] His Worship thought there may have been a financial reason as to why she had not attended, but that was not a matter which was relied upon by the appellant, except in a passing reference to her unemployment benefits of $300 a fortnight in the context of a plea in mitigation of sentence. Nevertheless, his Worship must have taken that into account in deciding to forfeit less than the amount the recognizance required. There was no other basis upon the material before him upon which he could have exercised that power (see s 40 and s 41 of the *Bail Act*).

[19] The order that three months time be given to pay the fine of $500, at least in so far as it goes to the forfeiture under the *Bail Act*, can be seen as a suspension of the forfeiture order (s 41(2)(a)).

[20] In *Birdwood v Murphy*, unreported 3 September 1997, Mildren J referred to what he described as a long standing practice adopted by prosecutors in the Northern Territory to offer no evidence, so as to relieve a person in the position of the appellant from a forfeiture order as well as a possible conviction and penalty for the offence. It was also pointed out by his Honour in that case that when a forfeiture order is made it is for the full amount, but if there is a discretion under s 41 to remit, suspend or reduce the amount. It would be better if the two stages of the process were not rolled up together. This Court is entitled to know, upon a review of any such decision or decisions, the basis upon which the Court proceeded.

[21] No real attack was made upon his Worship's decision not to accept that on the material before him it was not possible for the appellant to have attended in accordance with her undertaking. The medical evidence did not justify that failure and a simple statement of earnings of $300 per fortnight does not of itself indicate that a person does not have sufficient resources to attend. Being released upon bail on an undertaking to appear in Court is not a matter to be treated lightly. The question might be asked as to why a person who comes from Sydney to the Northern Territory and commits a criminal offence should be treated any differently to a person who lives in the

locality. People who commit offences are to be treated on the same basis regardless of their place of residence.

[22] The effective order reducing the forfeiture of the $500 to $300 will stand.

[23] Had the matter proceeded by way of summons, rather than arrest, the appellant would not have stood at risk of suffering a financial penalty for not attending before the Court.

[24] I consider it would be relevant when fixing a penalty to take into account any penalty which the accused person has already suffered as a result of his or her offending. Certainly prosecutors, as part of their armoury of discretionary decision making, have thought it not to be contrary to the interests of justice to offer no evidence in some cases.

[25] The appellant was a young woman pursuing tertiary studies who became involved in the protest movement. The protests were capable of being undertaken without the commission of criminal offences, but given the arrest of her friends, the appellant impetuously and wrongly thought that her duty to them required her to intervene. It was by no means a serious example of that type of offence. She had no convictions and was of positive good character.

[26] Having reminded myself of the provisions of s 8 of the *Sentencing Act* 1995 (NT), I am not satisfied that his Worship's sentencing discretion in relation

to the recording of a conviction miscarried, notwithstanding that he had taken into account an irrelevant circumstance.

[27] That circumstance was treated by his Worship as being an aggravating circumstance of the offence and thus gave rise to an increase in penalty. In my opinion, given the effective penalty by way of forfeiture of $300, no further or other penalty was called for. It was appropriate to have made an order discharging the appellant.

[28] The decision regarding the reduction of forfeiture from $500 to $300 is affirmed. The suspension of the order for three months is affirmed. The appellant is convicted. The appeal against sentence is allowed by quashing the penalty of $180 and substituting an order that the appellant be discharged. The levy of $20 under the *Crimes (Victims Assistance) Act* remains and three months is allowed to pay. (It is deemed to be a fine, s25B(7)(b)).
