PARTIES:	WREN, Lawrence v RICHARDSON, Ronnie
TITLE OF COURT:	Supreme Court of the Northern Territory
JURISDICTION:	Supreme Court of the Northern Territory exercising Territory Jurisdiction
FILE NOS:	No. JA 18 of 1995
DELIVERED:	Darwin 21 September 1995
HEARING DATES:	28/7/95 and 28/8/95
JUDGMENT OF:	Angel J

CATCHWORDS:

Appeal and new trial - Practice and procedure - Plea of guilty - conviction set aside - Ambiguity in complaint and summons - Single and continuing charge

Justices Act ss57A, 22A

Alfonso Lawrence Liberti (1991) 55 A Cr R 120, followed

R v Stewart [1960] VR 106, considered

Gower v Ross [1959] SASR 278, considered

Antonios Kardogeros 49 A Cr R 352, considered

REPRESENTATION:

Counsel:

Appellant: M Carter

Respondent: J Withnall

Solicitors:

Appellant: Close & Carter

Respondent: Withnall & Cavenagh

Judgment category classification: B

Court Computer Code:

Judgment ID Number: ang95017

Number of pages: 7

Distribution: Local Published

ang95017

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. JA 18 of 1995

BETWEEN:

LAWRENCE WREN
Appellant

AND:

RONNIE RICHARDSON
Respondent

CORAM: ANGEL J

REASONS FOR JUDGMENT

(Delivered 21 September 1995)

Justices appeal against conviction and penalty.

In February 1995, the appellant was summonsed to appear before a Court of Summary Jurisdiction at Darwin on a charge that

> "between the **14th day of October 1994 and the 15th day of February 1995** within the Municipality of Palmerston in the Northern Territory of Australia,
>
> **Did keep a dog, namely a mixed breed type dog, within the Municipality of Palmerston that was not registered, contrary to By-law 17 of the Palmerston (Animal Control) By-laws.**"

The summons was in the form of Schedule 3 of the Justices Act.

It was endorsed as follows:

> "I have read the terms of the charge against me herein specified and I acknowledge my commission of the offence charged and plead guilty hereto.
>
> I offer the following explanation for the acts alleged in the summons to be an offence:".

Pursuant to s57A of the Justices Act, the appellant endorsed the rear of the summons with the words 'I plead guilty' and signed the endorsement. He offered no explanation "for the acts alleged in the summons to be an offence".

On Friday, 21 April 1995, in the absence of the appellant, the matter came on for hearing before Messrs Minahan and Kulatunga, Justices of the Peace. Mr Withnall appeared for the respondent at the hearing. The entire record of proceedings is as follows:

> "MR WITHNALL: I have Mr Wren here. Now, this was a bit of a problem for Mr Richardson last time in that the court didn't have a file. I came over later that day and had the court make up a dummy file with copy documents. If you in fact have an original affidavit of service that would be enough to proceed on.
>
> MR MINAHAN: No, we've got the original summonses here and in fact - - -
>
> MR WITHNALL: Good. Obviously the court's relocated the missing file.
>
> MR MINAHAN: On the one to the offence between 14 October and 15 February, he has actually signed the endorsement. He has offered nothing else though.
>
> MR WITHNALL: Yes, so he has. Yes, he has crossed out the opportunity to offer an explanation. The facts are that the defendant has received prior notices requiring him to register the particular dog, however following a complaint concerning the dog, a registration search on 15 February revealed that it was still not registered despite the several prior written warnings.
>
> It is an ongoing offence, Your Worship. If you were minded to, given the allegation of the period of

unregistration between the two observations, it would come to 7,380. We are of course not recommending that.

MR MINAHAN: How many days is it again?

MR WITHNALL: Seven - it can't be sir, can it, it has to be an even number. Perhaps I could ask Your Worship just to set a stiff penalty.

MR MINAHAN: That was with certificates of conviction, too, wasn't it? Yes. It was served with certificates of conviction.

MR WITHNALL: In that case, yes I have. I have a previous certificate of conviction which I seek to tender. He was convicted on 14 October last year of keeping the same dog unregistered. On that occasion he was fined $100.

MR MINAHAN: The total is $1,740, that is comprised of $500 in fine and $1,240 representing $10 a day. So the defendant will be convicted and fined $1,740 with $40 costs, $20 victims levy, three months to pay.

MR WITHNALL: That should certainly wake him up."

By-law 17(1) of the Palmerston (Animal Control) by-laws provides:

"Subject to this by-law, a person who ordinarily keeps a dog that is not registered within the Municipality is guilty of an offence."

By-law 31 provides:

"A person who contravenes or fails to comply with these By-laws is guilty of an offence and is liable on conviction to a penalty not exceeding $2,000 and in addition, to a penalty not exceeding $100 for each day during which the offence continues."

The first two grounds of appeal are as follows:

"That a conviction was wrongly recorded for a continuing offence when the Appellant mistakenly endorsed the Summons with a plea of guilty believing that he was pleading guilty to a single offence in circumstances of a Complaint which failed unambiguously to warn the

Appellant of the nature of the charge under the Palmerston (Animal Control) By-Laws.

That the fine imposed was manifestly excessive for a single offence and that the Complaint and Summons served on the Appellant failed to unambiguously disclose to the Defendant the facts or particulars to be alleged which did constitute a continuing offence."

In support of these grounds, the appellant swore an affidavit wherein, amongst other things, he deposed to the following:

"4. When reading the summons before endorsing the words quoted, I believed I was pleading guilty to a single offence of keeping a dog on an unspecified day between the 14th of October, 1994, and the 15th of February, 1995.

5. I did not intend to plead guilty to, nor am I guilty of, the charge of keeping a dog on each and every one of the days between these dates stated on the summons.

...

8. I did not appreciate that I was charged with an offence that constituted or could be interpreted as being a continuing offence and I did not intend to admit that I was guilty of a continuing offence.

...

12. If the prosecution had clearly alleged, as I now believe they should have done, that it was to be alleged that I kept the dog on each and every day between the 14th of October, 1994, and the 15th of February, 1995, I would have pleaded not guilty I should be permitted to change my plea of guilty to a plea of not guilty and that my appeal against conviction, after a change of plea of guilty, should be allowed on the basis that the charge as stated in the summons is ambiguous and did in fact mislead me in a material way."

An appellate court will only exercise its power to set aside a conviction recorded following a plea of guilty in limited circumstances. As Kirby P (Grove and Newman JJ concurring) said in *Alfonso Lawrence Liberti* (1991) 55 A Cr R 120 at 121-122:

"This Court has power to set aside a conviction recorded following a plea of guilty: see *Forde* [1923] 2 KB 400 at 403; *Gower v Ross* [1959] SASR 278; *Stewart* [1960] VR 106; *Foley* (1963) 80 WN (NSW) 726. From these and other cases it is clear that a court will entertain an appeal against such a conviction, notwithstanding a guilty plea, if it appears:

(a) that the appellant did not appreciate the nature of the charges or did not intend to admit that he was guilty of them; or

(b) that the appellant, upon the admitted facts, could not in law have been convicted of the offence charged; see esp *Caruso* (1988) 49 SASR 465 at 489; 37 A Crim R 1 at 26.

For good reasons, courts approach attempts at trial or on appeal in effect to change a plea of guilty or to assert a want of understanding of what was involved in such a plea with caution bordering on circumspection. This attitude rests on the high public interest in the finality of legal proceedings and upon the principle that a plea of guilty by a person in possession of all relevant facts is normally taken to be an admission by that person of the necessary legal ingredients of the offence: see *O'Neill* [1979] 2 NSWLR 582; (1979) 1 A Crim R 59; *Sagiv* (1986) 22 A Crim R 73 at 81."

Section 22A of the Justices Act relevantly provides:

"(1) Any information, complaint, summons, warrant or other document under this Act in which it is necessary to state the matter charged against any person shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.

(2) The statement of the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms,and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by any law of the Territory, shall contain a reference to the section of the law of the Territory creating the offence.

(3) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be required."

The fate of the appeal against conviction turns, it seems to me, on whether the allegation that "between the 14th day of October 1994 and the 15th day of February 1995" the appellant kept an unregistered dog was sufficient to alert the appellant that he faced a continuing offence rather than an isolated offence some time between those dates, ie. sufficient to inform the appellant as to the true nature of the charge. I do not think it was. The allegation admits of ambiguity. The allegation may reasonably be taken to mean a continuing offence between the dates; it may also reasonably be taken to mean an isolated offence on an unspecified day between those dates. A single sexual offence is often alleged as having occurred on an unspecified day between specified dates. If the allegation had been "from (and including) the 14th day of October 1994 to (and including) the 15th day of February 1995", there would have been no doubt.

The appellant says he understood the charge to mean a single offence and pleaded guilty on that basis. He was not sought to be cross-examined on his affidavit. By-law 31 was not mentioned in the summons. Given some room for misunderstanding as to the exact nature of the charge I accept what the appellant says, that is, that he did not appreciate the nature of the charge alleged and did not intend to admit his guilt thereof. It follows, I think, that he should be given an opportunity to withdraw his plea of guilty and contest the charge, as is his wish.

In coming to this conclusion I have not overlooked that an appeal against conviction on a plea of guilty can only succeed "... in very exceptional circumstances", *R v Stewart* [1960] VR 106 at 108, that success on such a ground 'must be rare': *Gower v Ross* [1959] SASR 278 at 282; that it is for the appellant to persuade the court that there has been a mistake that led the appellant to plead guilty, ie. that there has been a miscarriage of justice, and that the burden of so doing is a heavy one: *Antonios Kardogeros* (1990) 49 A Cr R 352 at 357, *Stewart*, supra, at 109. I also note that the drafting of the charge is in a standard form for a single continuing offence which has been accepted in courts in the past: see eg. *James v Lorne Sawmills Proprietary Ltd* [1923] VR 58; *Ex parte Palmer* [1907] 7 SR(NSW) 544; cf *Chiltern District Council v Hodgetts and Another* [1983] 1 All ER 1057 at 1060 per Lord Roskill ('on and since 27 May 1980')

The conviction and penalty are set aside and the matter remitted to the Darwin Court of Summary Jurisdiction for re-hearing.
