Henwood v Duggan & Ors [2018] NTSC 1

PARTIES:	HENWOOD, Maurisa v DUGGAN, Andrew AND: HENWOOD, Maurisa v MALOGORSKI, Mark
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	JA 3 of 2016 (21437142) and JA 4 of 2016 (21428841)
DELIVERED:	11 January 2018
JUDGMENT OF:	KELLY J
APPEAL FROM:	LOCAL COURT

REPRESENTATION:

Counsel:

Appellant:	Self Represented
Respondents:	R Murphy

Solicitors:

Appellant:	Self Represented
Respondents:	Murphy & Associates

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

Henwood v Duggan & Ors [2018] NTSC 1
No. JA 3 of 2016 (21437142) and
No. JA 4 of 2016 (21428841)

BETWEEN:

MAURISA HENWOOD
Appellant

AND:

ANDREW DUGGAN
Respondent

AND BETWEEN:

MAURISA HENWOOD
Appellant

AND:

MARK MALOGORSKI
Respondent

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 11 January 2018)

[1] The appellant, Maurisa Henwood, was charged with a number of drug offences alleged to have been committed in May and August 2014.

[2] On file number 21428841 ("the May charges") it was alleged that during the week of 31 May 2014, the appellant travelled to Darwin from Maningrida with seven family members. Whilst in Darwin, she sourced approximately

110.93 grams of cannabis. She wrapped six packages of the cannabis in duct tape and smeared these with engine oil. Early in the morning of 31 May 2014, the car in which the appellant was travelling was stopped by police a short distance from the Maningrida turn-off, near Jabiru, for the purpose of conducting a random breath test. On approaching the vehicle, the police recognised the appellant and her husband who was driving. Relying on their knowledge of the appellant and her husband they searched the vehicle and the appellant pursuant to s 126C of the *Police Administration Act 1979* (NT) and found the six packages of cannabis under the appellant's clothing.

[3] The appellant was charged with unlawful possession of a trafficable quantity of cannabis plant material contrary to s 9(1) and (2)(e) of the *Misuse of Drugs Act 1990* (NT) ("the Act") and with the unlawful supply of cannabis plant material to Maningrida residents contrary to s 5(1) and (2)(a)(iv) of the Act.

[4] On file number 21437142 ("the August charges") it was alleged that at some time before 19 August 2014, the appellant travelled from Maningrida to Darwin and came into possession of a quantity of cannabis. She went to the residence of her nephew, Nick Vogiazakos-Henwood, and gave him approximately one ounce of cannabis. The appellant and Mr Vogiazakos-Henwood then wrapped their respective portions of cannabis in black duct tape. In the early hours of 19 August 2014, the appellant, her husband, two of her children, and Mr Vogiazakos-Henwood left Darwin intending to travel to Maningrida. The defendant and Mr Vogiazakos-Henwood kept the

wrapped cannabis on their laps so that it would be easier to discard if police intercepted them. The car was identified on Maningrida Road in Arnhem Land by an unmarked police car and signalled to stop. The appellant's car continued past the unmarked police vehicle, and police saw black plastic-wrapped packages being thrown out of the car. The car stopped soon after when it was intercepted by a second police vehicle. The total weight of cannabis found in the car and in the plastic packages retrieved from the road was 137.23 grams. Of this, 82.23 grams was identified as belonging to the appellant.

[5] The appellant was charged with unlawful possession of a trafficable quantity of cannabis plant material and with the unlawful supply of cannabis plant material to Nick Vogiazakos-Henwood.

[6] The appellant pleaded guilty to the August charges on 25 June 2015 and to the May charges on 24 September 2015. She was legally represented on both occasions.

[7] On 25 June 2015, after the appellant had entered her guilty plea, the proceeding in relation to the August charges was adjourned to 14 August for submissions.

[8] Mr Adams appeared for the appellant on the adjourned date. On that occasion Mr Adams sought and obtained leave to withdraw from the matter on the ground that he had given certain advice to the appellant which had not been accepted. After Mr Adams withdrew, the appellant spoke for

herself, and she told the court that she had been forced to enter the guilty plea to the August offending on the previous occasion by her sister.

[9] The matter was adjourned to 11 September 2015 to allow the appellant an opportunity to speak to Legal Aid about possible future representation.

[10] On 11 September 2015, the appellant failed to appear in answer to her bail and a warrant was issued for her arrest.

[11] The proceedings in relation to both the August charges and the May charges (as well as the fresh charge of breach of bail) were before the court again on 24 September 2015. The appellant was again legally represented, this time by Mr Connop. On that date, the appellant pleaded guilty to the May charges. The learned magistrate informed Mr Connop that the appellant had raised an issue in relation to her guilty plea to the August charges and stood the matter down so that he could obtain specific instructions in relation to that matter. When the matter was called back on, Mr Connop informed the court that he had instructions from the appellant to confirm the plea of guilty to the August charges.

[12] On 4 November 2015, the appellant was convicted and sentenced to an aggregate term of imprisonment of four months for the May charges and convicted and sentenced to an aggregate term of imprisonment for six months for the August charges, to be served cumulatively, bringing the total effective sentence to a term of imprisonment for 10 months. The term of

imprisonment was suspended after four months with an operational period of two years on conditions of supervision.

[13] On 4 December 2015, Northern Territory Legal Aid Commission filed a notice of appeal against conviction and sentence in relation to both the May charges and the August charges on the appellant's behalf. The grounds of appeal were that the convictions were unsafe and unsatisfactory and that the sentence was manifestly excessive.

[14] After that the appellant neglected to prosecute the appeal and did not maintain contact with her lawyers. On six occasions the matter was mentioned and on each occasion the respondent appeared and the appellant did not. On 13 April 2016 the appeal was mentioned for the seventh time. On that date the Northern Territory Legal Aid Commission sought and was granted leave to cease to act for the appellant. The appellant did not appear. Ms Dixon appeared for the respondent and made application under Rule 84.13 of the *Supreme Court Rules* that the appeal be dismissed for want of prosecution.

[15] There being insufficient proof that the appellant had been made aware of the respondent's application, and of the fact that the matter was to be mentioned on 13 April 2016, I adjourned the matter to 4 May 2016 and requested the respondent to write to the appellant advising her of the date of the next hearing and of their intention to apply to have the matter struck out should the appellant not appear on that date.

[16] On 4 May 2016 the appellant appeared and opposed the application to strike out the appeal. I gave directions for the filing and service of written submissions and indicated that I would determine the appeal on the papers.

The appeal against conviction

[17] The appellant provided handwritten submissions, as well as other materials, which made three identifiable complaints, but did not particularise which of these complaints related to which charge or how they supported the grounds of appeal. Those three complaints were:

(a) that the appellant was forced to plead guilty so that her partner would go free;

(b) that police drug squad members used her disabled nephew to give evidence against her regarding the supply of drugs; and

(c) that police "pick on" her and her partner and repeatedly pull people over on the Jabiru/Maningrida Road and ask whether the appellant is selling them "gunja".

[18] Complaints (b) and (c) do not disclose any ground of appeal. That leaves complaint (a).

[19] The only material provided by the appellant in relation to this complaint is a statement in her handwritten submissions: "On 4 November I did not wanted to plead guilty but they force me so my partner can go free and on charges I

felt that this was unfare." (sic) She provided no particulars about who had forced her and how and no evidence relevant to this assertion.

[20] The materials attached to the submissions provided by the appellant included: a 'Maningrida Feedback Report' on Remote Services Delivery that the appellant co-authored with 10 others; an email which purports to attach an Ochre Card for the appellant and a letter of support for the appellant, authored by a lecturer from Batchelor Institute, Ms Delvene Clarke; four general letters of support; a medical certificate excusing the appellant for a two day period of time unrelated to this offending (the certificate is dated 2011 and describes only a 'Medical Condition' and gives no further details); an incomplete legal document (wholly unrelated and signed only by the appellant), dated June 2016; a will of a relation (the surname matches that of the appellant); and a letter confirming acceptance of an offer of employment for the appellant's husband. These materials were not given any context in the written submissions except that reference was made to her health and the medication she was receiving; she asserted that the recent death of her mother required her to take antidepressants to deal with the grief; and she made a comment about her partner's employment. She did not attempt to relate the material to the grounds of appeal.

Principles: Appeal against conviction after a plea

[21] Toohey J said in *Maxwell v The Queen*:[1]

[1] (1996) 184 CLR 501 at 522

> A defective plea of guilty may be withdrawn and a conviction set aside on various grounds. This is part of the inherent jurisdiction of courts to see that justice is done and some, if not most, of the decisions mentioned are explicable on the footing that, in the view of the court, the accused lacked full understanding of the plea or there was some other mitigating factor. To this end the court may refuse to accept a guilty plea or direct that a not guilty plea be entered. [references omitted]

[22] In *Singh v The Queen*,[2] the Northern Territory Court of Criminal Appeal identified the principles governing applications for leave to appeal where the applicant had pleaded guilty, and applied (amongst other authorities) *Hogue v The State of Western Australia*:

> It is no easy matter for an appellant to persuade a Court to set aside a conviction based on a plea of guilty. The appellant, in such a case, must show that there has been a miscarriage of justice: *Borsa v The Queen* [2003] WASCA 254 at [20] per Steytler J. The three well recognised circumstances (albeit not exhaustive) that will amount to a miscarriage of justice and result in the plea of guilty being set aside are: where the appellant did not understand the nature of the charge, or did not intend to admit guilt; where upon the admitted facts, the appellant could not in law have been guilty of the offence; and where the guilty plea has been obtained by improper inducement, fraud or intimidation, and the like.[3]

[23] The Court of Criminal Appeal in *Singh* also applied *R v Toro-Martinez*:

> A person who has pleaded guilty will be permitted to withdraw that plea where it has been shown that a miscarriage of justice has occurred. The applicant for such permission bears the onus of showing the existence of that miscarriage. It will be shown to exist where, for example, the plea was induced by threats or other impropriety when the applicant would not otherwise have pleaded guilty. There must be shown to be some circumstance which

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2 [2014] NTCCA 16

3 ibid at [32], citing *Hogue v The State of Western Australia* [2005] WASCA 102 at [22] per Wheeler JA

> indicates that the plea of guilty was not really attributable to a genuine consciousness of guilt.[4] *[emphasis added]*

[24] The appellant has demonstrated none of these things and no other reason why the convictions could be said to be unsafe and unsatisfactory. The appellant was legally represented at the time she entered both pleas. At no time has she made any specific comment about being unwilling to plead guilty to the May charges. Although she at one time asserted to the learned magistrate that she had been forced by her sister to plead guilty to the August charges, when those charges were again before the court, the matter was stood down so that this issue could be explored and her lawyer informed the court that the appellant had given him instructions to confirm the guilty plea.

[25] The appeal against conviction is dismissed.

Appeal against sentence

[26] In the notice of appeal, the appellant appealed on the ground that the sentence was manifestly excessive. The principles governing such appeals are well known. A court does not interfere with the sentence imposed merely because it is of the view that the sentence is insufficient or excessive. Nor does it interfere because the appeal court might have been inclined to give somewhat more or somewhat less weight to relevant matters taken into account by the sentencing judge. It interferes only if it be shown

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4 ibid at [32], citing *R v Toro-Martinez* (2000) 114 A Crim R 533 at 537-538 per Spigelman CJ (Newman and Adams JJ concurring)

that the sentencing judge or magistrate was in error in acting on a wrong principle or in misunderstanding or in wrongly assessing some salient feature of the evidence. The sentence is presumed to be correct.

[27] In her handwritten submissions, the appellant identified no error of principle - indeed she made no submissions at all in relation to the appeal against sentence - and there is nothing in the transcript of proceedings on 4 November 2015 to suggest that the sentence merits review.

[28] There is nothing in the transcript to suggest that the sentencing magistrate allowed irrelevant or extraneous matters to affect the sentencing discretion or that he mistook the facts. (His Honour confirmed that he had the agreed facts that had been tendered earlier by the parties.) Nor is there anything to suggest that his Honour failed to take into account material considerations in sentencing, or acted on a wrong principle. (His Honour gave priority to the sentencing principal of specific and general deterrence which was appropriate.) The sentence of 10 months imprisonment, suspended after four months for a period of two years, was not manifestly excessive.

[29] The appeal against sentence is dismissed.
