

*Radziowsky v Ryan* [2001] NTSC 6

PARTIES: RADZIOWSKY, Nick  
v  
RYAN, Craig Victor

TITLE OF COURT: SUPREME COURT OF THE NORTHERN  
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN  
TERRITORY EXERCISING TERRITORY  
JURISDICTION

FILE NO: JA61/00

DELIVERED: 23 February 2001

HEARING DATES: 13 February 2001

JUDGMENT OF: MARTIN CJ

**CATCHWORDS:**

CRIMINAL LAW

Practice & procedure – judgment and punishment – penalty - community  
service where fine usually appropriate – method of calculation.

*Sentencing Act* 1995 (NT), s 27(10)

**REPRESENTATION:**

*Counsel:*

Appellant: R Goldflam  
Respondent: G McMaster

*Solicitors:*

Appellant: NTLAC  
Respondent: DPP

Judgment category classification: B  
Judgment ID Number: mar0104  
Number of pages: 4

Mar0104

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

*Radziowsky v Ryan* [2001] NTSC 6  
No. JA61/00

BETWEEN:

**NICK RADZIOWSKY**  
Appellant

AND:

**CRAIG VICTOR RYAN**  
Respondent

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 23 February 2001)

- [1] This appeal raises the question of the approach which should be adopted by courts when ordering that an offender perform community service rather than sentencing the offender to pay a fine in circumstances where a fine would normally be appropriate. It is a rare case arising from the wishes of the appellant.
- [2] The appellant was convicted in the Court of Summary Jurisdiction sitting at Alice Springs for three offences, namely, driving a motor vehicle upon a public street with a blood alcohol content of .134%, not holding a driver's licence and the motor vehicle, being driven at night, was not fitted with effective head or tail lights. The maximum financial penalties in respect of those offences are \$750 for the first, and \$2,000 for each of the others.

- [3] The appellant was unrepresented. He informed the court that he was “on employment benefit” and indicated that he would prefer to undertake community service rather than pay a fine. An officer from the Department of Correctional Services was present and provided the court with a report under s 35 of the Sentencing Act 1995 (NT). The report apparently satisfied his Worship that he had jurisdiction to make such an order. He said that he would “aggregate the three penalties”, and ordered the appellant to participate in community service for 120 hours within a period of six weeks. The maximum term of hours that could be ordered is 480 (Sentencing Act, s 36(1)). He was also disqualified from obtaining a driving licence for six months and there is no appeal in respect of that.
- [4] His Worship gave no indication as to the method by which he arrived at the number of hours of community service which he fixed. The grounds of appeal are that the number of hours so fixed was manifestly excessive, and that his Worship erred in calculating the number of hours.
- [5] Counsel for the appellant submitted that his Worship’s remarks indicate that he intended to impose a penalty by way of community service order in substitution for an appropriate fine. That appears to be so. It is then said that a “tariff” fine for the first charge would be \$500 and for each of the other \$100, a total of \$700 and that there is no reason to think that there was any basis upon which fines, if imposed, would have been significantly different than the tariff.

- [6] The submission proceeds to correctly point out there is nothing in the Sentencing Act which aids in determining what approach should be taken when a court is considering the number of hours to be fixed for a community service order in a case where a fine would ordinarily be appropriate.
- [7] The appellant points to s 27(10) of the Act, providing that in certain circumstances an offender may apply to the Director to participate in a community service project in satisfaction of a fine or part of a fine which remains unpaid. In those circumstances the offender is to satisfy payment by participating in the community service project for one hour for each \$12.50 remaining unpaid with a minimum of eight hours, and a maximum of 480 hours (see also s 28(3)). It is submitted that the formula should be applied by a court where it decides to make a community service order instead of imposing a fine where a fine would ordinarily be appropriate. In this case that would produce the result of converting a theoretical fine of \$700 into 56 hours of community service. (Conversely, a community service order of 120 hours equates to a fine of \$1,500 on this basis).
- [8] The submission goes on that it was unjust for the court to impose a more severe penalty on the appellant by way of community service than would be effectively imposed by the statute had he been fined the appropriate sum, failed to pay it and engaged in community service.
- [9] There is much to be said for the appellant's submissions, the respondent accepted them and thus invited the court to find error in the sentence, quash it and re-sentence the appellant to 56 hours community service.

[10] Another approach may be to order community service for the same proportion of the maximum number of hours which might be ordered, 480, as the theoretical fine bears to the maximum fine which could be imposed, in this case, 700/4750. This produces a result of about 71 hours.

[11] An objection to that method of calculation is that it produces the same unfairness as is referred to in par [8]. Another is that maximum fines are fixed by reference to the level of the offence in the order of criminality, whereas the maximum number of hours for community service is not. That maximum is provided for without express regard to the seriousness of the particular offence, whereas regard is paid to the relative seriousness of different offences in the fixing of the maximum monetary penalties. (Compare s 109 in the Victorian Sentencing Act whereby the maximum number of hours which might be ordered by way of community service is dependent upon the level of the offence).

[12] I ordered the Director to prepare and provide to the court a report about the appellant and his circumstances (s 35(2)). It shows that he is considered suitable.

[13] I accept the appellant's submissions. The sentence imposed by the Court of Summary Jurisdiction is quashed and the appellant is ordered to participate in an approved project for 56 hours. He is required to present himself at a place and to a person, within the time and by means as directed by the Director in writing.

-----