Bates v Marinov [2007] NTSC 3

PARTIES:	BATES, Jamie v MARINOV, Ivan
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	JA 55 of 2006 (20616776)
DELIVERED:	17 January 2007
HEARING DATE:	17 January 2007
JUDGMENT OF:	RILEY J

REPRESENTATION:

Counsel:

Appellant:	S Cox QC
Respondent:	A Nobbs

Solicitors:

Appellant:	Northern Territory Legal Aid Commission
Respondent:	Office of the Director of Public Prosecutions

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

Bates v Marinov [2007] NTSC 3
No JA 55 of 2006 (20616776)

IN THE MATTER OF the *Juvenile Justice Act*

AND IN THE MATTER OF an appeal against sentence handed down in the Youth Justice Court at Darwin

BETWEEN:

BATES, Jamie
Appellant

AND:

MARINOV, Ivan
Respondent

CORAM: RILEY J

EX TEMPORE
REASONS FOR JUDGMENT

(Delivered 17 January 2007)

[1] On 21 November 2006 the appellant pleaded guilty to four offences committed on the night of 17/18 January 2006. Those offences arose out of an unlawful entry of the Saigon Supermarket at Palmerston and were one count of unlawful damage upon entry, one of unlawful entry, one of stealing goods to the value of $410 and one of unlawful damage within the premises.

The appellant was convicted on each count and sentenced to detention for a period of five months. The sentence of detention was suspended forthwith and the appellant was placed under supervision.

[2] The appellant appeals against that sentence on the following grounds:

> (1) That the learned sentencing magistrate erred in that he failed to adequately take into account the defendant's youth and lack of antecedents.
>
> (2) That the overall sentence imposed by the learned sentencing magistrate was manifestly excessive.

[3] The offending occurred when the appellant, who was then aged 16 years, and a co-offender went to the Saigon Supermarket on the night in question. The appellant picked up a plank of wood and handed it to his co-offender who used it to smash a window next to the door of the supermarket. They entered the supermarket and removed drinks which they consumed on the premises. They then went to the freezers and opened the doors, leaving them open. At the time the freezers contained meat, prawns and fish which all defrosted and became unusable. They then picked up several bottles of sauce and emptied them over the floor. They also tipped the sauce over bags of rice and mung beans, destroying those items. They later located a fire extinguisher and used that to spray the shelves and plants on the shelves. As they left the store they removed a DVD player. The total cost of goods stolen and damage done was $1350.

[4] Police were called to the scene and the appellant was identified through his DNA profile. When asked his reason for entering the supermarket and stealing from it he said he had no money. When asked why he had caused the damage within the store he said: "Because I was high and it seemed like fun".

[5] The criminal history of the appellant was placed before the court and that revealed that he had first been before the Darwin Juvenile Court in October 2005 for offences of entering a building at night, unlawful damage and stealing. Those matters were dealt with by way of family conference. On 24 February 2006, that is after the date of the offending the subject of this appeal, he was dealt with for offences of unlawful use of a motor vehicle and stealing and he was released on a good behaviour bond involving supervision. On 18 April 2006 he was dealt with for offences of trespassing on enclosed premises, unlawfully damaging property, unlawful use of a motor vehicle and entering and damaging a dwelling. In relation to those offences he was sentenced to a period of detention. The commencement date for that detention was backdated and then the sentence suspended with the appellant being released under supervision.

[6] The learned sentencing magistrate was provided with a court report pursuant to s 52 of the Juvenile Justice Act. The report showed the appellant to be 16 years of age. His natural father had no involvement in his upbringing and he had been cared for by his mother and stepfather. He had two siblings from the relationship between his mother and stepfather. The report

revealed that the appellant had been living away from home for substantial periods because he "was refusing to live by the house rules, and continually displayed contempt and disrespect for the stepfather". His mother believed that he had been involved in paint sniffing and advised of two occasions when he had been taken to Royal Darwin Hospital as a result. His mother did not want him to return home due to the long history of conflict between Jamie and the stepfather as well as Jamie and one of his siblings.

[7] When interviewed the appellant said that he had not lived at home for the majority of the period from late 2003 to the time of the offending. He said he had been banned from several shopping centres because of his behaviour. He informed the interviewing officer that he would like to locate his biological father to "bash him". He was not interested in receiving training to increase his employment opportunities and he advised that he did not wish to be placed in care and that he was able to "manage his life very well".

[8] In imposing sentence the learned sentencing magistrate noted the plea of guilty which he treated as being at an early time. He went on to say:

> "Your offending on this occasion was bad. This poor shop owner, it wasn't his fault. You have broken in there. It's bad enough to break into it and steal but then you have got personal. You destroyed items in the freezer, wasting money. You have made a deliberate mess and according to the victim impact statement the victim had to close his supermarket for three days to clean up. That is a loss of business. It is unacceptable and nasty. It's one thing to break into someone's business premises and steal from them, but then to turn it nasty and to create deliberate damage and make it look less pleasant for them adds an extra element to the offending, which makes it worse.

> I think in my view even though this was your first offending before the courts not dealing with the diversion matters, I think that given that this was part of a spate of offending that a period of detention is a necessary requirement and it won't be minor detention. You have spent some little time in detention on other matters and that wasn't a good experience and apparently there was some concerns that you might get infected by that. Thus far you don't appear to have. I will give you one chance on this file not to go to detention, but if you reoffend you will lose that chance."

[9] His Honour then went on to impose the sentence to which I have referred.

[10] Whilst it is true that the appellant went on to commit other offences for which he was punished, firstly by way of bond and then by way of detention, it must be borne in mind that this was the first of the offences committed. He had already been dealt with for the other offences constituting what his Honour described as a "spate of offences". Those other offences, being subsequent offences, could not "require" a period of detention.

[11] In sentencing the appellant it is clear that the learned sentencing magistrate did take into account his youth and his antecedents. He was a 16-year old and was dealt with under the Juvenile Justice Act. The learned sentencing magistrate was an experienced magistrate operating in a court with which he was very familiar. He made specific reference to the antecedents of the appellant and it is clear he took them into account.

[12] The principal submission on behalf of the appellant was that the sentence was manifestly excessive. The principles applicable to such an appeal are well known. It is fundamental that the exercise of the sentencing discretion is not 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 a sentence imposed merely because it is of the view that the sentence is excessive. It interferes only if it be 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 must appear in what the sentencing magistrate said in the proceedings or the sentence itself may be so excessive as to manifest such error. In relying upon this ground it is incumbent upon the appellant to show that the sentence was not just excessive but manifestly so. He must show that the sentence was clearly and obviously, and not just arguably, excessive: *Liddy v R* [2005] NTCCA 4 at [12].

[13] In support of the submission that the sentence was manifestly excessive, counsel referred to the fact that the offence was committed by the appellant in company with an older co-offender with whom he had been sniffing paint. It was said that he had been living away from home and was in an unstable environment and was experiencing family difficulties. He had unresolved anger towards his natural father. Since the offending the appellant had dissociated himself from his co-offender. He had been dealt with for the offences which occurred after the offences which were before the learned sentencing magistrate and he had complied with all sentencing orders and had not reoffended or breached any of those orders. It was noted that he had already experienced a period of detention whilst on remand for the subsequent offences and that concerns had been expressed by custodial

officers that he would be “corrupted” by any further detention. Finally it was put that his relationship with his mother had improved and that he had resided with his aunt for six months and was, at the time of sentencing, in a stable environment. It was submitted that, in all the circumstances, the sentence was “unreasonable and plainly unjust”.

[14] It was submitted on behalf of the appellant that he should have received a non-custodial disposition. Reference was made to s 81(6) of the Youth Justice Act which provides that a court should only impose a sentence of detention on a youth as a last resort. In the circumstances of this matter where, as at the time of committing the offences, the appellant was a juvenile offender without prior convictions who had demonstrated some degree of rehabilitation and where, as was submitted on his behalf, his prospects for further rehabilitation had been enhanced by moving in to a stable environment residing with his auntie it could not be said that a sentence of detention was necessary. He had remained out of trouble in the intervening period. As has been pointed out in many cases, courts dealing with juveniles must exercise restraint and patience. The appellant gave positive and encouraging indications of rehabilitation.

[15] In this matter, of particular significance is the fact that the Crown has conceded the appeal should be allowed and joins with the appellant in submitting that the sentence should be set aside.

[16] In all the circumstances I agree the sentence imposed was manifestly excessive. A sentence of detention was not called for. The appeal is allowed and the sentence is set aside.

[17] It then falls for me to re-sentence the appellant. I take into account the matters to which I have already referred. I bear in mind the advice I have received this afternoon that the appellant is about to enter into an 8-week course as a deckhand. I note the fact that he is present in Court with a supervisor. It seems that his good prospects for rehabilitation continue and I impose a sentence which will encourage that course.

[18] He will be convicted. He will be released on a bond in the sum of $1000 to be of good behaviour for a period of 12 months from this day. It will be a condition of the bond that he be supervised by officers of Correctional Services and obey all reasonable directions of those officers as to residence, reporting, associates, curfew, education, employment, training and substance counselling.

[19] In relation to the order for restitution, although it is suggested that he should only bear half of the amount ordered to be paid to the victim, I see no reason to interfere with the order made in the court below and that order shall remain in place.

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