PARTIES:	REGINA
	v
	SHIELDS, Jason Gerard
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA EXERCISING TERRITORY JURISDICTION
FILE NO:	No 201 of 1996
DELIVERED:	Darwin, 4 February 1997
HEARING DATES:	20 December 1996
JUDGMENT OF:	MARTIN CJ

CATCHWORDS:

Criminal Law and Procedure - Jurisdiction, practice and procedure - Judgment and punishment - Sentence - Whether s52(1) Sentencing Act 1995 (NT) restricts Court's power to impose one term of imprisonment where number of offences charged on more than one indictment - Totality principle - Individual sentences are required to be imposed and then adjusted in the most appropriate manner in the circumstances to arrive at the desired result.

Sentencing Act 1995 (NT), s52(1)

Mill v The Queen (1988) 166 CLR 59, at 62-3, considered.
John Bernard Nixon (1993) 66 A Crim R 83, referred to.
The Queen v Smith & Shoesmith (1983) 32 SASR 219, considered.
Ryan v The Queen (1982) 149 CLR 1, considered.
John Skrjanc (1993-94) 71 A Crim R 347, referred to.

REPRESENTATION:

Counsel:

Appellant:	Mr M J Carey
Respondent:	Mr J Watson

Solicitors:

Appellant:	DPP
Respondent:	NAALAS

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 201 of 1996

BETWEEN:

REGINA

AND:

JASON GERARD SHIELDS

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 4 February 1997)

On 26 November last I sentenced Jason Shields in respect of a number of offences detailed on two indictments. There were three charges on the first indictment, and a further charge on an ex officio indictment. As I said at the time, I had considered imposing sentences on each of the offences charged on the first indictment aggregating 14 months imprisonment, and for that on the ex officio indictment, 12 months imprisonment, giving a total of 26 months. However, taking into account certain features of the case and the totality principle, I proceeded instead not by fixing individual sentences and adjusting

them in some manner, but to impose a sentence of 18 months imprisonment overall.

The Director of Public Prosecutions requested that the matter be brought back before me to raise a point of law going to the basis upon which the ultimate sentence was arrived at, not the sentence itself. I agreed to reopen the proceedings with a view to hearing submissions as to whether a sentence had been imposed which was not in accordance with the law, and, if so, to impose a sentence which was in accordance with the law. I do not consider the matter should more appropriately be dealt with by a proceeding on appeal (see s112 of the *Sentencing Act* 1995 (NT)). The issue, as framed by the Director, was whether or not s52(1) of the *Sentencing Act* restricts the Court's power to impose one term of imprisonment, as was done in this case, when it has before it a number of offences, but charged on more than one indictment. That subsection reads:

> "Where an offender is found guilty of 2 or more offences joined in the same information, complaint or indictment, the court may impose one term of imprisonment in respect of both or all of those offences but the term of imprisonment shall not exceed the maximum term of imprisonment that could be imposed if a separate term were imposed in respect of each offence."

The prisoner was represented on the hearing and submissions made on his behalf.

In *Mill v The Queen* (1988) 166 CLR 59 at pp62-63 the High Court said:

"The totality principle is a recognized principle of sentencing formulated to assist a court when sentencing an offender for a number of offences. It is described succinctly in Thomas, *Principles of Sentencing*, 2nd ed. (1979), pp. 56-57, as follows (omitting references):

> "The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong['']; 'when ... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behaviour and ask itself what is the appropriate sentence for all the offences'."

See also Ruby, *Sentencing*, 3rd ed. (1987), pp. 38-41. Where the principle falls to be applied in relation to sentences of imprisonment imposed by a single sentencing court, an appropriate result may be achieved either by making sentences wholly or partially concurrent or by lowering the individual sentences below what would otherwise be appropriate in order to reflect the fact that a number of sentences are being imposed. Where practicable, the former is to be preferred."

The Court also referred to *The Queen v Smith & Shoesmith* (1983) 32 SASR 219 and *Ryan v The Queen* (1982) 149 CLR 1. A reading of those cases shows there are a number of ways in which the totality principle might be applied. In *The Queen v Smith* the Court, Mitchell, Jacobs and Matheson JJ., reduced the effective period of imprisonment imposed by ordering that it commence at an earlier date. In *Ryan v The Queen* Brennan J. at pp22-23 said:

> "When an accused person is convicted on two or more counts regularly joined, the trial judge is entitled to assess an appropriate overall sentence having regard to the entire course of criminal conduct which constitutes

> the several elements of the offences of which the accused is convicted. If the offences are founded on the same facts, it is necessary to ensure that the appropriate penalty for the same act or omission is not imposed twice; if the offences are part of a series, the entirety of the criminal conduct of the same or similar character, rather than the several acts or omissions constituting the separate offences, may determine the appropriate overall sentence to be imposed. In pronouncing sentence, however, the trial judge imposes separate sentences in respect of the several offences of which the accused has been convicted, effecting the appropriate overall sentence by adjusting the severity of the separate sentences and, when custodial sentences are imposed, by ordering that they be served either concurrently or cumulatively."

Upon further consideration of those authorities, I consider that although the overall sentence of 18 months imprisonment was appropriate, the law requires that individual sentences be imposed, and then adjusted by whatever is the most appropriate manner in the circumstances so as to arrive at the desired result. Once that is done the question raised by the Director no longer requires an answer, since there will no longer be one term of imprisonment imposed in respect of all of the offences whether upon the one indictment or both. There will be individual sentences in relation to each offence on both indictments, but adjusted in a manner appropriate to arrive at the sentence of 18 months imprisonment.

A provision similar to s52(1) of the *Sentencing Act* has received judicial consideration in South Australia in *John Bernard Nixon* (1993) 66 A Crim R 83 and *John Skrjanc* (1993-94) 71 A Crim R 347. It is seen as conferring an unfettered discretion providing the courts with another alternative in formulating a multiple sentencing package; it is not a substitute for nor does it replace the existing law and practice relating to the structure of multiple sentences.

It would be open to me to impose one term of imprisonment in respect of all of the offences on the first indictment, and impose a sentence in respect of that on the ex officio indictment and proceed to order that there be a degree of concurrency so as to arrive at the desired result, but I consider I should stay with what I originally had in mind and proceed to impose sentences as follows:

On the first indictment

Count 1, for unlawful entry with circumstances of aggravation, eight months imprisonment.

Count 2, for stealing, two months imprisonment.

Count 3, for unlawful use of a motor vehicle, six months imprisonment.

Ex officio indictment

For stealing, 12 months imprisonment.

Taking into account the totality principle, it is ordered the sentences on the first indictment be served concurrently, an effective sentence of eight months imprisonment and that of the sentence of 12 months imprisonment imposed in respect of the offence on the ex officio indictment, two months be

served concurrently with the effective sentence of eight months imprisonment on the first indictment. The total term of imprisonment to be served is 18 months.

The period prior to which the prisoner will not be eligible to be released on parole remains at nine months, and the order that the sentence and non-parole period commence from 10 September 1996 is not amended.
