

CITATION: *Keringbo v Rigby* [2024] NTSC 17

PARTIES: KERINGBO, Raymond

v

RIGBY, Kerry Leanne

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: APPEAL from LOCAL COURT exercising Territory jurisdiction

FILE NOs: LCA 31 of 2023 (22226231)
LCA 32 of 2023 (22226216)

DELIVERED: 20 March 2024

HEARING DATE: 6 December 2023

JUDGMENT OF: Burns J

Sentencing Act 1995 (NT) s 5(1), s 40(2)

Cumaiyi v Tyson [2023] NTSC 29; *Dunn v Woodcock* [2023] NTSC 24; *Garling v Firth* [2016] NTSC 4; *Perkins v Heath* [2017] NTSC 74; *The Queen v S W Bugmy* [2004] NSWCCA 258, referred to.

REPRESENTATION:

Counsel:

Appellant: J Bourke
Respondent: D Payne

Solicitors:

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

Judgment category classification: C
Judgment ID Number: Bur2405
Number of pages: 6

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

Keringbo v Rigby [2024] NTSC 17
Nos. LCA 31 of 2023 (22226231); LCA 32 of 2023 (22226216)

BETWEEN:

RAYMOND KERINGBO

AND:

KERRY LEANNE RIGBY

CORAM: BURNS J

REASONS FOR DECISION

(Delivered on 20 March 2024)

- [1] On 26 July 2023, the appellant entered pleas of guilty to a number of property related offences before a judge of the Local Court of the Northern Territory sitting at Wadeye. These offences were committed between 22 and 24 August 2022. The appellant was sentenced on 1 August 2023 to a total term of imprisonment of 4 months commencing 13 June 2023. It was ordered that this sentence be suspended after 45 days, effectively the time in which the appellant had been held in custody pre-sentence.
- [2] The Order of suspension was subject to four conditions, being:
- a) Not to commit another offence punishable by imprisonment;

- b) Not to possess or consume alcohol;
- c) To be released into the custody of [BC] on 27 July 2023 directly from prison; and
- d) To travel directly to Wadeye on 27 July 2023 with [BC] and to report to the OIC Wadeye Police Station.

[3] The appellant appealed from the sentence imposed. The appeal was confined to the second of the conditions listed above, being that the appellant not possess or consume alcohol. The Notice of Appeal, as amended, pleaded three grounds of appeal, being:

- i. The Local Court failed to afford procedural fairness to the appellant by imposing a non-intoxication condition without notice or opportunity to be heard.
- ii. In sentencing the offender, the Local Court acted on wrong principle: namely, by imposing a non-intoxication condition which was unnecessary; needlessly onerous; otherwise “undesirable”; contrary to law; or repugnant to the principles or policy of the law (*Dunn v Woodcock* [2023] NTSC 24 [7]).
- iii. In the alternative to Ground 2, the Local Court erred in failing to give adequate reasons.

- [4] On 6 December 2023, I allowed the appeal and varied the Orders made by the primary judge by deleting the condition that the appellant not possess or consume alcohol. These are my reasons for making those Orders.
- [5] The respondent agreed that the appeal should be upheld on Grounds i. and iii., but not on Ground ii. It was my opinion that the appeal should be upheld on all grounds.
- [6] The appellant was 19 years old at the time of offending and had no prior convictions or findings of guilt. The appellant did have convictions recorded against him for offences which were committed after 24 August 2022, but he was correctly treated as having no prior convictions by the primary judge on 1 August 2023.
- [7] It was accepted by the respondent that alcohol misuse was not involved in any of the offences for which the appellant was sentenced on 1 August 2023. It was not raised by counsel for the appellant or the respondent as a criminogenic factor relevant to the appellant. The appellant entered early pleas of guilty and was considered to have good prospects of rehabilitation.
- [8] At no stage prior to sentence did the primary judge indicate an intention to impose a condition that the appellant not possess or consume alcohol, and nor did her Honour seek any submissions from the parties directed to that issue. The appellant was thus deprived of the opportunity to address the court on the proposed condition. In addition, the transcript of the

proceedings in the Local Court shows that the primary judge gave no reasons for imposing that condition.

[9] I am not to be taken as suggesting that elaborate reasons need to be given in the Local Court for every condition attaching to a bond or Suspended Sentence Order, but where (as here) the proposed condition has no apparent connection to the offences under consideration, the circumstances of the offender, or criminogenic risks identified for the offender, the sentencing court should give advance warning to counsel and seek submissions before imposing the condition. This will enable counsel to provide assistance to the court and will enable the court to expose its reasons for considering it desirable to impose the condition.

[10] In the present case, I concluded that the condition not to possess or consume alcohol was not one which the primary judge could impose in the proper exercise of her Honour's sentencing discretion. Section 40(2) of the *Sentencing Act 1995* (NT) permits a court to make a Suspended Sentence Order "subject to such conditions as the court thinks fit". This undoubtedly give a very broad discretion to sentencing courts in determining what conditions to impose. The discretion, however, is not without limits.

[11] In *Cumaiyi v Tyson*,¹ Brownhill J said, at [10]:

The power to impose conditions upon a suspended sentence is contained in s 40(2) of the *Sentencing Act 1995* (NT) ('*Sentencing Act*'). It is a power to impose such conditions as the Court thinks fit. The power is

¹ [2023] NTSC 29 ('*Cumaiyi*').

brought, but not unlimited and may only be imposed for one or more of the legitimate purposes for which sentences may be imposed as set out in s 5(1) of the *Sentencing Act*. Conditions must reasonably relate to either the character of the particular crime committed or the purposes of punishment for that crime, including deterrence and rehabilitation. There must be some nexus between the particular offending, including what may have caused the offender to engage in that offending, and the particular condition imposed. The conditions should not in their operation be unduly harsh, unreasonable or needlessly onerous.

(Footnotes omitted)

- [12] In *Cumaiyi*, Brownhill J cited *Garling v Firth*;² and *Perkins v Heath*,³ who herself cited *The Queen v S W Bugmy*⁴ where Kirby J, with whom Bryson JA and James J agreed, said:

First, the discretion as to conditions that may be attached to a bond is broad but not unlimited. The conditions must reasonably relate to the purpose of imposing a bond, that is, the punishment of a particular crime. They must therefore relate either to the character of that crime or the purposes of punishment for the crime, including deterrence and rehabilitation.

Secondly, the conditions must each be certain, defining with reasonable precision conduct which is proscribed.

Thirdly, the conditions should not in their operation be unduly harsh or unreasonable or needlessly onerous.

- [13] In the present case, it could not be said that the condition that the appellant not possess or consume alcohol reasonably related to the punishment of the particular crimes committed by the appellant. The condition did not relate to the character of the crimes or any purpose of punishment for the crimes. It could not be justified as relating to deterrence or rehabilitation.

² [2016] NTSC 41 at [35] per Hiley J.

³ [2017] NTSC 74 at [14] – [16] per Kelly J.

⁴ [2004] NSWCCA 258 at [61].

[14] For this reason, I allowed the appeal and amended the Suspended Sentence Order by deleting the condition that the appellant not possess or consume alcohol.
