Trajkov v Pryce [2000] NTSC 16

PARTIES:	JORDON TRAJKOV and LEONARD PRYCE
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NOS	9909367 (JA86/1999)
DELIVERED:	30 March 2000
HEARING DATES:	27 March 2000
JUDGMENT OF:	RILEY J

REPRESENTATION:

Counsel:

Appellant:	Mr R Goldflam
Respondent:	Dr N Rogers

Solicitors:

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

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

Trajkov v Pryce [2000] NTSC 16

No 9909367 (JA86/1999)

IN THE MATTER OF the *Justices Act*

AND IN THE MATTER OF an appeal against sentence handed down in the Court of Summary Jurisdiction at Alice Springs

BETWEEN:

JORDON TRAJKOV
Appellant

AND:

LEONARD PRYCE
Respondent

CORAM: RILEY J

REASONS FOR DECISION

(Delivered 30 March 2000)

[1] The appellant in this matter was convicted of four offences arising out of an incident that occurred on 28 April 1999 at Alice Springs. At the time the appellant had been waiting to board a bus. He became agitated and abusive whilst waiting for the bus to depart. The driver of the bus refused to allow him to board because of his language to both the driver and other people in the vicinity. The appellant then struck the driver twice on the cheek. He

also spat at the driver on two occasions. There was a struggle with the bus driver and eventually police arrived and arrested the appellant. He resisted the police officers as they endeavoured to take him to a police vehicle.

[2] When he arrived at the police station the appellant was placed in the police cells in an observation unit. He there exposed his penis and rubbed it up against the perspex in full view of police officers.

[3] The appellant was convicted of unlawful assault of the bus driver, the use of objectionable words, resisting a member of the police force in the execution of his duty and behaving in a disorderly manner at a police station. There is no challenge to the findings of guilt in relation to these matters.

[4] The appellant appeals against sentence and does so on the sole ground that the learned Magistrate erred in "placing excessive weight in sentencing on the principle of general deterrence in a circumstance in which the offender was not, by reason of his mental disorder or abnormality, an appropriate vehicle for a deterrent sentence".

[5] At the time of making her findings of guilt her Worship found that there was no evidence that the appellant had been behaving with an abnormality of mind. She observed that he was "out of control in the sense that he was aggressive and agitated". When sentencing the appellant her Worship had regard to a report of a psychologist Mr Peter Mals. In that report Mr Mals identified a number of problems that the appellant experienced. The report was based upon information obtained from the appellant and noted a

longstanding abuse of alcohol. There was also a history of head injury and possible brain damage. Mr Mals noted that the appellant has a level of intellectual functioning well below average. He suffers from "distorted beliefs" which Mr Mals thought may stem from his "generally poor comprehension". He has a limited grasp of English and a tendency to misconstrue the nature of the words and actions of others which he perceives to be more hostile or threatening than intended.

[6] Mr Mals felt that the appellant was not a suitable candidate for any treatment program because he held an apparently genuine and complete belief that he had not committed any offence. However Mr Mals felt that there may be some value in a period of supervision of the appellant in the hope that this would permit scrutiny of his use of alcohol and, if it be established that he was abusing alcohol, then the appellant may be directed into an appropriate rehabilitation program.

[7] The learned Magistrate observed, correctly in my view, that the assault upon the driver was a serious assault upon a person attempting to do his job and who was also endeavouring to calm the appellant. She went on to say:

> "Given your problems as outlined in the psychological report, you do not appear to be a person who is an appropriate candidate for a program directed at self-control of anger and aggression; even if there were such a program in Alice Springs, of which I'm not aware. It would also seem that over the years you have dramatically reduced your ingestion of alcohol and there is no suggestion at this time that you would be an appropriate candidate for an alcohol abuse program.

> I do not consider it would be appropriate to impose upon you a suspended sentence of imprisonment with the supervision of the department, as I do not consider that that is likely to be helpful to you. It has been pointed out that because of your problems you are not really a candidate for specific deterrence. However, this offence in my view, as I say, is serious and I consider a sentence must be imposed which would deter, if not you, then at least other members of the community from similar behaviour".

[8] The learned Magistrate proceeded to convict the appellant and sentenced him to a period of imprisonment for two months.

[9] The appellant complains that the learned Magistrate should not have taken into account to the extent that she did the factor of general deterrence. Whilst it was acknowledged that general deterrence is a relevant consideration in the sentencing exercise, it is a consideration to which less weight may be given in the case of an offender suffering from a mental disorder: *R v Champion* (1992) 64 A Crim R 244 at 254. In such circumstances general deterrence should be "sensibly moderated" to meet the circumstances of the accused person who suffers from a severe mental handicap: *R v Richards and Gregory* (1998) 2 VR 1 at 10; *R v Yaldiz* (1998) 2 VR 376.

[10] It is clear from the passage quoted from the sentencing remarks that the learned Magistrate did take into account general deterrence and did so without regard to the moderating effect of the mental condition suffered by the appellant. In this regard she fell into error.

[11] However, there was no submission made that the sentence of two months imprisonment was inappropriate in all the circumstances, rather the appellant contended that the sentence ought to have been wholly suspended and the appellant released under supervision.

[12] The observations of the learned Magistrate that this was a serious assault upon a member of the public carrying out his work is an accurate assessment of the situation. The appellant has a history of violence and he has previously been sentenced to imprisonment for assault. The last occasion being as recent as June 1999 when he was sentenced to five months imprisonment for assaulting a female. As her Worship observed the prior record of the appellant does not mean that he is to be dealt with more severely for what occurred on this occasion but it does mean that he does not obtain the benefits to which he would be entitled had he been a person without the history that has been disclosed. A further factor to be taken into account in the sentencing process is any need to protect the Territory community from the offender (s 5(1)(e) *Sentencing Act*).

[13] The findings of her Worship were that the appellant was unlikely to benefit from any program directed at self-control of anger and aggression. Further she noted that there was no suggestion that he would be an appropriate candidate for an alcohol abuse program. In so finding her Worship was supported by the observations of Mr Mals in his report.

[14] The basis upon which Mr Mals suggested that a period of supervision may assist the appellant was that it would permit scrutiny of him and his (possible) use of alcohol. However the appellant asserted that he no longer had an alcohol problem and her Worship, on this occasion, was not satisfied that he was intoxicated. She accepted that "he had had little to drink on this particular night". There was evidence from witnesses other than the appellant to support this finding. Her Worship also accepted that the appellant had, over the years, "dramatically reduced" his ingestion of alcohol.

[15] Taking into account the circumstances of the offending and of the appellant it is my view that a sentence of imprisonment was warranted. The appellant did not contend otherwise. Further there is nothing in the circumstances of the offending or in the circumstances of the appellant which would warrant the suspension of the sentence either wholly or in part. The appellant has offended on a number of occasions and has spent time in custody. There is nothing in the material available to me which would suggest that his prospects of rehabilitation would be enhanced by suspension of the sentence of imprisonment.

[16] In all of the circumstances and notwithstanding that the point raised by the appellant might be decided in his favour, I dismiss this appeal pursuant to s 177(2)(f) of the *Justices Act*, as I consider no substantial miscarriage of justice has actually occurred.

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