

CITATION: *Jenkins v Firth* [2018] NTSC 61

PARTIES: JENKINS, Trevor

v

FIRTH, Justin

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory  
jurisdiction

FILE NO: LCA 57 of 2017 (21556341)

DELIVERED: 6 April 2018

REASONS PUBLISHED: 3 September 2018

HEARING DATES: 6 April 2018

JUDGMENT OF: BLOKLAND J

**CATCHWORDS:**

APPEAL FROM LOCAL COURT – Procedure and power of Court to order dismissal for want of prosecution – terms of order – extension – appeal dismissed.

*Local Court (Criminal Procedure) Act, s 177.*

**REPRESENTATION:**

*Counsel:*

Appellant: Self-represented  
Respondent: L Hopkinson

*Solicitors:*

Respondent: Office of the Director of Public  
Prosecutions

Judgment category classification: C

Judgment ID Number: BLO1806

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

*Jenkins v Firth* [2018] NTSC 61  
No. LCA 57 of 2017 (21556341)

BETWEEN:

**TREVOR JENKINS**  
Appellant

AND:

**JUSTIN FIRTH**  
Respondent

CORAM: BLOKLAND J

REASONS FOR JUDGMENT

(Delivered 3 September 2018)

**Introduction**

- [1] These are reasons for orders made by this Court on 6 April 2018 dismissing this appeal for want of prosecution. The appeal was against convictions imposed on 31 August 2017 following a hearing in the Local Court. Most of the charges the appellant originally faced in the Local Court were dismissed or withdrawn. The two convictions the subject of the appeal were for assault (count 4) and causing substantial annoyance (count 6).

## **The Notices of Appeal and the process followed in this Court**

- [2] This matter commenced by the appellant filing two Notices of Appeal on 7 November 2017, dated 11 and 31 August 2017 respectively. The first Notice of Appeal alleged the following grounds of appeal:

No police called witnesses, witnesses called all hostile, original matter notice to appear no charge, 3 months later no interview no investigation, [illegible] illegal charge, no investigation, no intent, not begun reassociate [illegible] witness, [illegible] prison attic [illegible], Kauchitski withheld evidence lies cross examination, Lau lied misled court, Withheld [illegible] evidence, Lau obstructed justice told witness to lie withheld evidence [illegible], Lau [illegible], Lau [illegible] court contempt, conspiracy to [illegible], Day 21 IV UK, Lau fabricated evidence, Lau [illegible] hostile witness obstruct justice, fabricate evidence (*sic*).

- [3] The second Notice of Appeal alleged the following grounds of appeal:

Original arrest, notice to appear no charge, police evidence tampered [illegible] + fabricated, intent none, mens rea no guilty mind, fail to call any police witnesses, failure to prosecute 4 months, opinion against me (hostile) pervert justice, prosecution only called 2 witnesses yet claimed 20-30 women & children present none called, prosecution withdrew call witnesses, entrapment deliberate plan Roy Weil harass cause innocent person intent mens rea to look committ crime appear, Roy Weil lied [illegible] witnesses deceived led lies police, unable to establish any grounds beyond reasonable doubt, magistrate interrupted Defence submissions objection, magistrate called witnesses himself issued subpoena then reversed decision + stuck then off, Sandy Lau prosecute deliberately breached me on suspended sentence 21425645 to win this case attempt to pervert course of justice, witness kevin pratt was a berrimah prison guard who lied on oath e was lede [illegible] in testimony by Lave Hurlen to deliberately harass me pervert justice + put me in gaol to win case, witness tegan kuschitzki counted coerced led over 4 months in testimony cross examination. Lau + [illegible] to [illegible] deliberate, perverted course of justice, Roy Weil only pressed charges cause I made immediate assault charge to police [illegible] him September 2015 + to Bishop Hurley acted to protect own reputation (*sic*).

[4] The matter was heard in the call-over list on four occasions before the Registrar. The appellant attended by telephone from the Darwin Correctional Centre on two instances (on 29 November 2017 and 13 December 2017), he did not attend a call-over on 24 January 2018, and attended in person on 21 March 2018. At the final call-over, the matter was listed for a mention before a Judge of this Court.

[5] The mention was for the purpose of case management, as the appellant had claimed he had not been provided with the relevant transcripts of proceedings in the Local Court. However, he had previously been advised to collect the documents from the security desk in the Supreme Court building. A file note dated 22 March 2018 made by a security officer in relation to the bundle of transcripts awaiting collection by the appellant states:

An attempt to hand back these documents to Mr Trevor Jenkins, I informed him that we can no longer store these and that if he refuses to take them they will be destroyed. Despite the warning Mr Jenkins refused the documents so I have returned the documents back to the registry.

[6] At the mention on 6 April 2018, there was no appearance by the appellant. The respondent was reluctant to seek an immediate dismissal of the appeal, as the appellant had previously been engaged in prosecuting the appeal, having attended three call-overs. Instead, the respondent submitted the Court could consider making an order dismissing the appeal but postponing finalisation of that order for a period of time within which the appellant could apply to reinstate the appeal. It was submitted the Court had the power

to make such an order under s 177 of the *Local Court (Criminal Procedure) Act*:

**177 Procedure and power of Supreme Court on appeal**

...

- (3) The Supreme Court may upon such terms as it thinks fit at any time before the order of dismissal is drawn up and sealed reinstate any appeal dismissed for want of prosecution.

- [7] It is accepted that this section authorises the Court to make an order in the terms proposed by the respondent. Therefore, this Court ordered that:

The appeal is dismissed for want of prosecution, but if the Appellant, within the next 14 days, makes an application to reinstate the appeal, it may be considered. The dismissal is not to be drawn up and sealed until 20 April 2018.

- [8] On 9 April 2018 the order was authenticated and forwarded to the parties, including to the appellant by email and post, and a copy was also left at the security desk for his collection.

- [9] On 20 April 2018, the final day for the appellant to apply to reinstate the appeal, the appellant attended the Supreme Court, refused to take the copy of the order at the security desk, and left. Later that day, he again attended the Supreme Court, and left an affidavit with the security desk for filing. This constituted effective filing as for various reasons, there exists a direction of the Chief Justice stating the appellant is not to approach the counters of the civil or criminal registries of the Supreme Court. However, the affidavit left with security was a Local Court document, was in the

wrong form, and did not include an application to reinstate the current appeal. It read as follows:

DUE TODAY, IMPORTANT URGENT, On the 6<sup>th</sup> April assaulted by guards [illegible] (criminal charges pending) MSS and unable to even legally attend hearing. ADC + NTCAT [illegible] ICAC hearing + minister [illegible] NSW judicial commission transcripts not given evidence DPP [illegible] harassing address [illegible] receive evidence cyclone Marcus evidence [illegible]. Juilianne Quinn said had mention [illegible] asked tell nothing Nelson Cue, hungry Tracey holm said nothing a letter, discrimination harass assault. Jesus [illegible]. GOD BLESS. Falsely mistrial assaulted kept outside tell nothing (*sic*).

[10] Due to the insufficiency of the affidavit, it was returned to the appellant along with pro forma Supreme Court application and affidavit forms for the appellant to complete and file if he wished to reinstate the appeal. Further, with the respondent's consent, the order of 6 April 2018 was varied to extend the time in which the appellant could file the application in the following terms:

The order of 6 April 2018 is varied by allowing a further 7 days for the Appellant to make an application to reinstate the appeal, to 27 April 2018. The application must be in accordance with the *Supreme Court Rules*.

[11] This order was again communicated to the appellant by email and post, and a copy left at the security desk for collection.

[12] No further documents were filed by the appellant by 27 April 2018, and an order finalising the dismissal of the appeal for want of prosecution was authenticated and circulated to parties on 1 May 2018. This order was again

sent to the appellant by email and post, and a copy left at the security desk for collection.

[13] For the above reasons, the appeal was dismissed and the parties notified accordingly.

[14] A copy of these reasons is to be provided to the parties.

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