Wolfe v Northern Territory of Australia [2002] NTSC 26

PARTIES:	VINCENT ANTON WOLFE
	v
	NORTHERN TERRITORY OF AUSTRALIA
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	LA2/2002 (20008432)
DELIVERED:	2 May 2002
HEARING DATES:	4 April 2002
JUDGMENT OF:	THOMAS J

CATCHWORDS:
CRIMES VICTIMS ASSISTANCE
Applicant to assist police in the investigation and prosecution of the offence – meaning of "assist".

Crimes (Victims Assistance) Act 1983 (NT) s 12(c)

Woodruffe v The Northern Territory of Australia (2000) 10 NTLR 52, applied
Geiszler v NT of Australia (unreported, NT Court of Appeal, 3 April 1996);
Wilson v Wilson's Tile Works P/L (1960) 104 CLR 328, followed
Mark Dobson v The Northern Territory of Australia (unreported, NT Magistrates Court 21 February 2002), distinguished.

REPRESENTATION:
Counsel:

Appellant:	P. Elliott
Respondent:	D. Alderman

Solicitors:

Appellant:	Priestleys
Respondent:	Halfpennys

Judgment category classification:	C
Judgment ID Number:	tho200202
Number of pages:	11

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

Wolfe v Northern Territory of Australia [2002] NTSC 26
No. LA2/2002 (20008432)

BETWEEN:

VINCENT ANTON WOLFE
Appellant

AND:

NORTHERN TERRITORY OF AUSTRALIA
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 2 May 2002)

[1] This is an appeal from a decision in the Local Court in which the learned stipendiary magistrate dismissed an application by the appellant under the Crimes (Victims Assistance) Act 1983.

[2] The appeal involves the construction of s 12(c) of the Crimes (Victims Assistance) Act which provides as follows:

> "12. Assistance certificate not to be issued in certain circumstances
> The Court shall not issue an assistance certificate -
> ……
> (c) where an applicant or victim has failed to assist the Police Force in the investigation or prosecution of the offence; ….."

[3] The grounds of appeal are as follows:

> "1. The learned Stipendiary Magistrate erred in law in that he wrongly determined the Appellant's signature to a Withdrawal of Complaint relating to the offence which gave rise to the Appellant's Application as conduct sufficient to disentitle the Appellant to the award of an Assistance Certificate under the provisions of the Crimes (Victims Assistance) Act ("the Act").
>
> 2. The learned Stipendiary Magistrate erred in law in that he did not correctly apply the elements of section 12(c) of the Act to the facts, in particular the learned Stipendiary Magistrate ruled that a Withdrawal of Complaint effectively put an end to any further action by Police.
>
> 3. The learned Stipendiary Magistrate erred in law in finding that the signing by the Appellant of a Withdrawal of Complaint constituted a failure to assist the Police Force in the investigation or prosecution of an offence.
>
> 4. The learned Stipendiary magistrate erred in interpreting section 12(c) of the Act in that he did not give section 12(c) a wide and remedial interpretation."

[4] The orders sought by the appellant are as follows:

> "1. The Appeal be upheld.
>
> 2. The Application for Assistance by the Appellant (File No. 20008432) in the Local Court at Darwin be referred back to the Local Court for an assessment of quantum.
>
> 3. The Respondent pay the Appellants' costs of and incidental to this Appeal."

[5] The appellant made an application under the Crimes (Victims Assistance) Act claiming that he had been assaulted in the Smith Street Mall on 3 April 1999. He subsequently attended Royal Darwin Hospital.

[6] He sustained a fractured nose, cuts to his face, bruising and swelling to the face, two black eyes and a very tender jaw. There was also evidence of "Post Traumatic Stress Disorder with a secondary depressive reaction and

paranoid ideas". This statement appears in the report of Dr McLaren sworn 2 August 2000.

[7] On 26 June 1999, the appellant attended the Darwin Police Station and made a report of the assault to Constable Peter Bravos. The appellant subsequently withdrew the complaint.

[8] There is a conflict between the evidence of Constable Bravos and the evidence of the appellant as to what was said on the date the appellant reported the matter to police.

Ground 1: "The learned Stipendiary Magistrate erred in law in that he wrongly determined the Appellant's signature to a Withdrawal of Complaint relating to the offence which gave rise to the Appellant's Application as conduct sufficient to disentitle the Appellant to the award of an Assistance Certificate under the provisions of the Crimes (Victims Assistance) Act ("the Act")."

[9] In his reasons for decision the learned stipendiary magistrate made findings in which he accepted the evidence of Constable Bravos and made the following findings of fact:

- "The applicant knew he had been given the name of the offender, but he did not tell the police this.
- The applicant had a friend who had witnesses (sic) the assault, but he did not tell the police this.
- An off duty policeman was a witness to the assault, but the applicant did not tell the police about this.
- The applicant withdrew his complaint, and it was his decision to do so."

[10] The learned stipendiary magistrate stated in the course of his reasons for decision delivered (t/p 4 – 5)"

> "The withdrawal of the complaint – and of course that's the actual document, evidence of that is an exhibit before the court, exhibit 6 – is a significant aspect in this case. The withdrawal of a complaint per se is not indicative of a failure to assist police because it may well be that a person has provided all the information in their possession; taken all reasonable efforts to assist the police in the investigation of the matter; but at the end of the day the matter is not considered to be worth taking any further.
>
> So in this particular case, what is important to my mind is what preceded the withdrawal of the complaint. I just consider it highly improbable, as I said before, that if in fact all of the information that the applicant says was conveyed to Bravos, that in fact that was conveyed, then rather than that indicating a dead-end in the investigation I think that, to my mind, it would indicate scope for further inquiry."

[11] I do not accept the submission of Mr Elliott, counsel for the appellant, that the magistrate erred. The reasons for decision as outlined by the learned stipendiary magistrate do not indicate that he had determined the applicant's signature to a withdrawal of complaint was conduct sufficient to disentitle the appellant to the award of an assistance certificate.

Ground 2: "The learned Stipendiary Magistrate erred in law in that he did not correctly apply the elements of section 12(c) of the Act to the facts, in particular the learned Stipendiary Magistrate ruled that a Withdrawal of Complaint effectively put an end to any further action by Police."

[12] In his reasons for decision, the learned stipendiary magistrate said at p 3:

> "To my mind there are some discrepancies between the oral evidence given by the applicant and his two affidavits, one sworn in January 2001 and one subsequently sworn in May 2001.
>
> The submission made on behalf of the applicant was that the applicant had been consistent throughout. I think a close examination of the affidavit material juxtaposed with his oral evidence does not bear out that submission entirely.
>
> The applicant says that when he was attended upon by Constable Bravos, that he mentioned the presence of the off-duty policeman; he mentioned his friend coming to his assistance; and he also mentioned having been informed of the name of the offender. Constable Bravos' evidence is to the effect that that didn't happen, or at least his evidence is not consistent with that. I think that's probably fair to say, that there is that conflict.
>
> As I said on the earlier occasion, this really boils down to a matter of who do I believe, bearing in mind, of course, the onus rests upon the respondent in proving the failure to assist in the investigation.
>
> Constable Bravos, at the time, recorded what transpired during that attendance or interview. He says he recorded all relevant matters on the computer system and there is before the court documentary evidence in the form of computer records, police records, which are relevantly contemporaneous with the event. Those records do not bear out the version that's put forward by the applicant.
>
> The applicant puts forward this version. That it was Constable Bravos who initiated the idea of the complaint being withdrawn or taken no further. Constable Bravos, of course, says that it was entirely a matter for the applicant whether or not he pursued the matter. At its highest, he said he merely inquired of the applicant whether he wished to pursue the complaint. As I understand Bravos' evidence that he put that question to the applicant in light of what the applicant was saying about not being able to recall a great deal about the event, being intoxicated, and believing that he would not be able to identify the defendant if he saw him again."

[13] It is part of the submission by Mr Elliott, on behalf of the appellant, that Constable Bravos should have been more pro-active in asking further questions of the appellant such as "Were there any witnesses to the assault?" The evidence of Constable Bravos which was accepted by the learned stipendiary magistrate is at t/p 25:

> "And in relation to Mr Wolfe's attendance, can you tell the court what occurred?---Yes. I'd an arrangement with Mr Wolfe over the phone to attend at the Darwin Police Station in regards to making a formal statement in relation to a complaint that he'd made of assault earlier on. Yes, Mr Wolfe came in and I had a conversation with him. Mr Wolfe stated that on the night in question when the alleged assault occurred, he was quite intoxicated and couldn't really remember the events of that night. Further he stated that he didn't know who the offenders were, wouldn't be able to recognise them again and that – and that being the case, he decided that the – the matter be withdrawn or I not pursue the matter after that. He then signed a withdrawal of complaint form and – and the matter was finalised."

[14] Mr Elliott submitted that the appellant would not know what further information would be of assistance to the police unless he were specifically asked. However, the evidence in this case from the appellant before the learned stipendiary magistrate is that he told Constable Bravos the name of his assailant as given him by a person. The appellant gave further evidence that the police officer told him he knew the person and that there were warrants out for his arrest and he was believed to be in Western Australia. The appellant also gave evidence that he was informed by the police officer that withdrawal of the complaint would not affect his application for Crimes Victims Assistance. The learned stipendiary magistrate did not accept the appellant's evidence on this aspect where it conflicted with the evidence of Constable Bravos.

[15] The learned stipendiary magistrate found that the appellant had not communicated to Constable Bravos certain matters the appellant had given evidence about to the Local Court i.e. that at the time of the assault a friend had come to his assistance, that an off duty police officer witnessed the

entire event and that someone at the scene had suggested the name of the offender.

[16] This is not a situation where the appellant has been ignorant of matters that could assist police with their inquiries as Mr Elliott suggested. The appellant gave evidence he did pass on all the information to Constable Bravos. The learned stipendiary magistrate did not accept the appellant's evidence on this aspect and indicated he preferred the evidence of Constable Bravos that there was no such communication to him of this information.

[17] I agree with the submission of Mr Alderman, counsel for the respondent, that; the magistrate properly found the attendance on 24 June 1999 was not an assistance, as the appellant did not further the investigation with the knowledge he had. Mr Alderman further submitted that; the magistrate properly found the appellant had not taken all reasonable steps to assist with the investigation.

[18] Counsel for the appellant referred to the decision of Mr Luppino SM in the matter of *Mark John Dobson v Northern Territory of Australia* No. 20104130 delivered 21 February 2002. In this matter Mr Luppino SM rejected the submission of the respondent that the applicant was required to take a pro-active role to satisfy the requirements of s 12(c). I would agree. Mr Luppino SM referred to the dictionary definition of "assist" and concluded that the applicant's role is secondary to the police and only requires the applicant to provide assistance as requested by the police. I

would agree with this interpretation. The burden of proof on this issue is on the respondent.

[19] However, the facts and circumstances in the matter before Mr Luppino SM are very different to the facts and circumstances in this matter. In the former there was a finding by the learned stipendiary magistrate that through no fault of the applicant he had not been able to make contact with the police officer and had never been asked to make a statement about the matter. This evidence was not contradicted by the respondent.

[20] In the case before this Court, the applicant did make contact with a police officer and made the extremely negative and unhelpful statement as outlined by Constable Bravos. The learned stipendiary magistrate found he did not communicate other relevant matters to the police officer about which he gave evidence to the Court. In the particular circumstances of this case, I do not consider it was incumbent upon Constable Bravos to pursue the matter further. Constable Bravos had in effect been told by the applicant that the applicant was drunk at the time of the offence, that he could not remember what happened, he could not provide any details of what occurred on the night of the offence, he couldn't identify the offenders, that there was no point in pursuing the matter and he wished to withdraw the complaint. On the evidence of Constable Bravos which the learned stipendiary magistrate accepted there was no mention made by the applicant to a claim under the Crimes (Victims Assistance) Act.

[21] I have concluded that the learned stipendiary magistrate correctly applied the elements of s 12(c) and was satisfied on the balance of probabilities that the appellant failed to assist in the investigation of the matter.

[22] I dismiss this ground of appeal.

Ground 3: "The learned Stipendiary Magistrate erred in law in finding that the signing by the Appellant of a Withdrawal of Complaint constituted a failure to assist the Police Force in the investigation or prosecution of an offence."

[23] The learned stipendiary magistrate made a finding that the appellant voluntarily withdrew the complaint and this ended the investigation. The withdrawal of the complaint was only one of a number of facts the learned stipendiary magistrate took into account.

[24] In particular, his Worship makes a finding based on the evidence that available information within the knowledge of the appellant was not passed on to the police. He does not state in his reasons for decision that the withdrawal of the complaint per se constituted a failure to assist the police in the prosecution of the offence. In fact he specifically states at p 4 of his reasons for decision that withdrawal of a complaint is not per se indicative of a failure to assist police.

[25] I would dismiss this ground of appeal.

Ground 4: "The learned Stipendiary Magistrate erred in interpreting section 12(c) of the Act in that he did not give section 12(c) a wide and remedial interpretation."

[26] I accept the submission made by Mr Elliott, counsel for the appellant, that the Crimes (Victims Assistance) Act is remedial legislation and where there is ambiguity, the construction most favourable to an applicant is to be preferred – see *Geiszler v Northern Territory of Australia* (unreported NT Court of Appeal, 3 April 1996); *Wilson v Wilson's Tile Works Pty Ltd* (1960) 104 CLR 328 at 335.

[27] I apply the principle expressed by the Court of Appeal in *Woodruffe v The Northern Territory of Australia* (2000) 10 NTLR 52 at 62:

> "The purpose or object underlying the Act is to provide compensation to victims of crime. The preamble to the Act is that it is 'An Act to provide assistance to certain persons injured or who suffer grief as a result of criminal acts'. The Act is remedial and therefore should be construed beneficially, although excepting provisions in a remedial Act do not necessarily have to be given a liberal interpretation: *Rose v Secretary, Department of Social Security* (1990) 92 ALR 521 at 524. Nevertheless, a provision such as s 12(b) which permits a person to be excused from his failure to give notice within a reasonable time, is a beneficial provision and should be construed accordingly: *Khoury v Government Insurance Office (NSW)* (1984) 54 ALR 639 at 649-650 per Mason, Brennan, Deane and Dawson JJ. The words in the proviso to s 12(b) must therefore be given a construction so as to give the most complete remedy which is consistent with the actual language employed and to which its words are fairly open. This approach is not confined to cases of ambiguity: *Pearce and Geddes, Statutory Interpretation in Australia*, 4th ed, par [9.2]. As we have attempted to demonstrate, the construction to s 12(b) promotes both the purpose underlying the Act and gives to the appellant the most complete remedy consistent with the actual language employed and to which its words are fairly open. …."

[28] Applying these principles, I am not able to find that the learned stipendiary magistrate applied the wrong test, that there is any error of law displayed in his reasons for decision or that he was wrong in concluding that on the balance of probabilities the applicant had failed to assist in the investigation of this matter.

[29] I dismiss this ground of appeal.

[30] The order I make in this matter is that the appeal be dismissed.

_____