Triantafillou v Sanderson [2006] NTSC 19

PARTIES:	TRIANTAFILLOU, Nikolaos
	v
	SANDERSON, Karen
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL FROM COURT OF SUMMARY JURISDICTION EXERCISING TERRITORY JURISDICTION
FILE NO:	JA 25 of 2005 (20420226)
DELIVERED:	15 March 2006
HEARING DATES:	15 March 2006
EX TEMPORE JUDGMENT OF:	RILEY J

REPRESENTATION:

Counsel:

Appellant:	M Johnson
Respondent:	A Nobbs-Carcuro

Solicitors:

Appellant:	Withnalls
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
Judgment ID Number:	ril0605
Number of pages:	4

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

Triantafillou v Sanderson [2006] NTSC 19
No JA 25 of 2005 (20420226)

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 Darwin

BETWEEN:

TRIANTAFILLOU, Nikolaos
Appellant

AND:

SANDERSON, Karen
Respondent

CORAM: RILEY J

EX TEMPORE
REASONS FOR JUDGMENT

(Delivered 15 March 2006)

[1] On 27 April 2005 the appellant pleaded guilty to three offences under the Traffic Regulations, namely failing to provide information (Traffic Regulation 9(2)(b)), drive without due care (Traffic Regulation 18) and fail to stop after an accident (Traffic Regulation 19(1)(a)). The maximum penalty provided for each of those offences is a fine not exceeding

20 penalty units ($2200) or imprisonment for six months. The learned sentencing magistrate imposed an aggregate sentence in relation to counts 1 and 3, being the offences of failing to provide information and failing to stop after an accident, of imprisonment for three months suspended immediately upon the appellant entering into a home detention order for three months. In relation to count 2, the offence of drive without due care, the appellant was fined $300. There was no challenge to that penalty. He was directed to make restitution in the sum of $2647.50 and there is no challenge to the restitution order.

[2] The appellant appeals against sentence on three grounds being that (1) the sentence was manifestly excessive; (2) the learned magistrate erred in taking into account matters extraneous to the offending; and (3) the learned magistrate erred in improperly punishing the appellant additionally for his prior criminal history.

[3] On the morning of the appeal the appellant sought leave to add a further ground of appeal, namely that the learned magistrate erred in finding count 1 proved as the facts presented to the court did not satisfy all of the elements of the offence.

[4] That ground was argued during the course of the morning. During the luncheon adjournment Ms Nobbs, who appeared on behalf of the respondent, alerted the appellant to the fact that the offence to which the appellant pleaded guilty was said to be pursuant to Regulation 9(2)(b) of the Traffic

Regulations and, in that regard, she observed that the regulation as so described did not create an offence. Indeed, the relevant offence is to be found in Regulation 9(5).

[5] The appellant sought leave to amend the grounds of appeal to include the following ground: that the learned magistrate erred in accepting a plea of guilty to an offence said to be pursuant to Regulation 9(2)(b) in relation to count 1 when count 1 did not in fact disclose an offence known to the law.

[6] Ms Nobbs, having raised the point, conceded that to be so and agreed that the grounds of appeal should be amended. I therefore directed that the grounds be amended and I allow the appeal.

[7] In so doing, I note that count 1 was expressed in terms of the appellant having failed to give information which might have led to the identification of the driver of a vehicle when required so to do. In fact, the offence which should have been preferred against him was that, being a person required to provide his personal particulars, gave false or misleading information pursuant to Regulation 9(5).

[8] In the circumstances the conviction in relation to count 1 cannot stand and I set it aside. As I have noted, an aggregate sentence was imposed in relation to counts 1 and 3 and therefore that sentence cannot stand and I set it aside. As I also indicated, there is no challenge to the sentence in relation to count 2.

[9] Pursuant to s 177(2)(d) of the Justices Act, the case in relation to the remaining count, which is count 3, is remitted for hearing in the Court of Summary Jurisdiction. In so doing I noted that I made no determination upon the grounds of appeal alleging that the sentence was manifestly excessive, that the learned magistrate erred in taking into account matters extraneous to the offending and the learned magistrate erred in improperly punishing the appellant additionally for his prior criminal history. Those matters did not arise for consideration in light of the allowing of the appeal to which I have referred.

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