IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

(tho92011)

JUSTICES APPEAL

BETWEEN:

LAWRENCE JABANUNGA WOOD
Appellant

AND:

JOHN HENRY CHUTE
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 29 January 1993)

This is an appeal pursuant to s163 of the *Justices Act* from a decision of a magistrate.

On 7 October 1992 the appellant was convicted in the Alice Springs Court of Summary Jurisdiction for an offence that on 4 August 1992 at Alice Springs he did have carnal knowledge of an animal, namely a dog, contrary to section 138 of the *Criminal Code*. The appellant pleaded guilty to the charge. The following facts were admitted to by the appellant through his counsel as being a correct statement of the facts in support of the charge. The agreed statement of facts put to the magistrate are as follows:

> "On Tuesday 4 August 1992 at 20 past 3 in the afternoon the defendant, Lawrence Jabanunga Wood, was in the communal yard at the Cawood Court flats. he was kneeling down in full view of several flats with his trousers down. He was holding a female dog by the hips just in front of him. The defendant then took his penis out of his pants and inserted it into a rear orifice of the dog. The defendant then had intercourse with the dog.
>
> This continued for some minutes in front of some children and a woman who were in the area and saw

what the defendant was doing. The woman yelled at the defendant to stop and then went and rang the police who attended a short time later. The defendant was pointed out to the police. He had a short conversation with them. When asked what he had been doing with the dog the defendant replied; 'I been finish up.' The defendant was then arrested and conveyed to the police station and took part in a record of conversation. He made full and frank admissions to the offence."

A record of prior convictions was tendered to the magistrate. This record indicates the appellant had been convicted on 13 May 1992 for Drive Exceed .08 and other traffic offences. He had convictions for Giving False Name and Drink Within 2 kms on 26 November 1991, traffic convictions on 8 November 1991 and a conviction for Offensive Behaviour on 21 July 1981.

The appellant has not previously been sentenced to a term of imprisonment.

Also tendered to the magistrate was a letter dated 17 September from Dr Bill Williams medical officer for the Central Australian Aboriginal Congress Inc. relating to the appellant's problem with alcohol.

On 7 October 1992 the magistrate convicted Lawrence Jabanunga Wood and sentenced him to a period of 14 days imprisonment.

The appellant did not seek to adduce any further evidence on the appeal.

The appellant appeals against that sentence. The grounds of the appeal being that:

(1) The said sentence is manifestly excessive in light of the following principles of sentencing

(a) general deterrents
(b) special deterrents

(2) That the learned Stipendiary Magistrate erred at law in treating the offensiveness aspect as deserving of imprisonment.

With regard to ground (1) it was accepted by the magistrate that on the relevant date Lawrence Wood was "disinhibited" by alcohol, he had a history of alcohol consumption and may have been affected by medication.

Counsel for the appellant argued that people with an abnormality of mind do not constitute an appropriate medium for making an example to the public *R v Anderson* (1981) VR 155, *R v Roadley* (1990) 51 A Crim R 336. Counsel for the appellant submitted the appellant is a chronic alcoholic, under the influence of heavy doses of alcohol on an almost daily basis. He sets himself apart from the general community and therefore is not an appropriate medium for setting an example to that community.

The authorities referred to by counsel and mentioned above, involve accused persons with intellectual impairments or mental illness. I find those cases difficult to equate with a person who commits an offence because they are affected by alcohol. Being affected by alcohol does not set an accused person apart from the general community. This court is well aware that a very substantial proportion of offences dealt with by the court are committed by persons under the influence of intoxicating liquor often in combination with medication or other drugs. The court is also aware that many persons in the community become intoxicated by alcohol but do not commit offences whilst under the influence of alcohol and/or medication. I do not accept the argument of counsel for the appellant that there is evidence to support a finding that the appellant is a person set apart from the general community because he is a chronic alcoholic. However, it is not necessary to decide the ground of appeal on that point because the magistrate

made it quite clear that general deterrence was not a significant factor. In his reasons for sentence the magistrate referred to the fact that in his years as a magistrate it was the first time he had dealt with anyone for such an offence. It is obviously not a prevalent offence before the courts. On my reading of the magistrate's reasons he did not consider general deterrence was an important factor but did consider the sentence should be such as to deter this particular defendant from offending again. The magistrate placed particular emphasis on the fact that the act was committed in an open area, near a block of flats, in broad daylight and his activity observed by a number of children and at least one woman.

With regard to the aspect of special deterrence, counsel for the appellant argued that the magistrate had mentioned the aspect of rehabilitation in that he stated:

> "There is no real opportunity for me to sentence him in a way which would require him to undergo alcohol rehabilitation, and of course it raises the real need for an institution of that type to be in Alice Springs."

Counsel argued that the court should not surrender its "duty to act judicially in order to supplement the community's social services which society has failed to provide in adequate measure." *R v Roadley* 51 A Crim R 336 at 342.

Counsel further argued that the magistrate should have made an attempt to discover what options for rehabilitation were actually available in Alice Springs, if necessary, by calling for a pre-sentence report.

The difficulty I have with that submission is that no material was put to the magistrate by counsel in the Court of Summary Jurisdiction as to what rehabilitation was available. Lawrence Wood had not been assessed for rehabilitation and in fact counsel for Mr Wood did not make any submissions to the magistrate that rehabilitation for the defendant in respect of the defendant's problem with alcohol would be appropriate. When the matter came before this court on appeal, counsel for the appellant in response to an enquiry from the court, listed three places in Alice Springs where persons can attend for counselling in respect of their alcohol problem. However, no submission was made or further evidence put to this court on appeal that Mr Wood had been assessed by one or other of the organisations as to his suitability for any particular program or that any of the organisations referred to by counsel for the appellant was prepared to take the appellant into whatever rehabilitation program they had to offer. The normal practice in the Court of Summary Jurisdiction, and as far as I am aware also in this court, is to have a letter or some form of acknowledgment from the appropriate organisation that they would be prepared to accept the offender for counselling or into a particular program, before the court makes any order that imposes an obligation not only on the offender but also on the particular organisation. Even more significantly, counsel for the appellant submitted rehabilitation for this particular offender was not relevant. Counsel for

the appellant submitted to this court on 9 December 1992 (transcript page 9):

> "It would be my submission that rehabilitation is not relevant partly because his criminal record doesn't show that this is a situation that's likely to recur. It's never happened before. It's not likely to happen again. He did touch on that issue though in his sentencing in respect of deterrence and I'd also argue that deterrence are not relevant in sentencing here either."

It is my understanding of the submissions made by counsel for the appellant that the appellant himself does not consider rehabilitation is appropriate as an option in the sentencing discretion.

In those circumstances I am of the opinion that the magistrate did not err by failing to explore more fully the prospects of rehabilitation.

Certainly the appellant himself appears to believe that rehabilitation is not appropriate.

With regard to ground (2) of the appeal, counsel for the appellant argued that the magistrate did not fully address the question of why he found that the act was so particularly offensive. That there is no evidence of community outrage at this type of event. Counsel for the appellant referred to the following decisions of the Supreme Court:

R v Major Willy No. 6 of 1990 a decision of Martin J
R v Raymond Rankine No. 22 of 1990 a decision of Kearney J

These cases were referred to as being sexual offences by men on young girls. Both the offenders were given wholly suspended gaol sentences for offences which, on the argument of counsel for the appellant, are

offences which the community at large would consider to be more offensive than this particular offence.

Having read these two authorities I consider the decisions turn very much on their own facts and circumstances and are not necessarily indicators of the sentences given generally for such offences.

On reading the magistrate's remarks on sentence it is clear that he had regard to the fact that Mr Wood is a 37 year old Aboriginal man living in Alice Springs. The magistrate had regard to the cultural, environmental and social factors before imposing a period of imprisonment. *R v Minor* 59 A Crim R 227, *R v Leo Juli* 30 A Crim R 31.

On my reading of the magistrate's reasons on sentence he was concerned to impose a sentence that would deter this particular offender from committing such an offence again. The magistrate also referred to the community outrage at this type of offence being committed in public. I agree with the magistrate's assessment of the communities attitudes. Police became involved because a member of the community telephoned them to complain about the appellant's actions. The magistrate referred to and rejected a number of other sentencing options as being inappropriate. I am satisfied that he viewed imprisonment as an option of last resort and that he considered that no other form of sentence was appropriate.

I do not consider the magistrate erred at law or that the penalty imposed is manifestly excessive.

Accordingly, the appeal is dismissed.