

*R v Muir* [1999] NTSC 51  
No 9819091

PARTIES: THE QUEEN  
v  
MUIR, Luke Adam

TITLE OF COURT: SUPREME COURT OF THE NORTHERN  
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN  
TERRITORY EXERCISING TERRITORY  
JURISDICTION

FILE NO: 9819091

DELIVERED: 6 May 1999

HEARING DATES: 5 May 1999

JUDGMENT OF: MARTIN CJ.

**CATCHWORDS:**

STATUTES – INTERPRETATION – SENTENCING ACT 1995 (NT)

Operation of s 52(3), s 53(1A), s 54(1A) and s 78A – mandatory sentencing provisions  
– fixing of non-parole period when imposing an aggregate sentence including a  
mandatory component – effect of joining two or more offences in same indictment.

*Sentencing Act 1995* (NT)

**REPRESENTATION:**

*Counsel:*

Appellant: Mr Watson  
Respondent: Mr Goldflam

*Solicitors:*

Appellant: DPP  
Respondent: Legal Aid

Judgment category classification:  
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mar99013  
IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

*R v Muir* [1999] NTSC 51  
No 9819091

BETWEEN:

**THE QUEEN**

AND:

**LUKE ADAM MUIR**

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 6 May 1999)

- [1] This matter concerns the operation of s 52(3), s 53(1A), s 54(1A) and s 78A of the *Sentencing Act* 1995 (NT).
- [2] Mr Muir came before me at Alice Springs on 4 May when he pleaded guilty to four charges, two of which are specified in Sch 1 to the Act as property offences, and two of which are not.
- [3] All the offences were committed in similar circumstances, over a short period of time and were all charged on the one indictment. In the circumstances, I considered it appropriate to impose an aggregate sentence as permitted under s 52 of the Act. It was common ground that the mandatory sentence required to be imposed under s 78A was three months

imprisonment. The sentence imposed was two years imprisonment and I fixed a non-parole period of 12 months. Counsel then rightly brought to my attention the provisions of s 53(1A) and s 54(1A) of the Act.

- [4] The first of those subsections provides that a court must not, as part of a sentence for a property offence, fix as any part of a period during which the offender is not eligible to be released on parole, any part of the mandatory period of the sentence. Similarly, s 54(1A) in relation to the fixing of a minimum non-parole period of 50% of the period of imprisonment that the offender is to serve where the sentence is for 12 months or longer, and not suspended in whole or part.
- [5] Both provisions are designed to ensure that a court can not ameliorate the statutory mandatory sentence for a property offence.
- [6] I accordingly vacated the orders and re-sentenced the offender to an aggregate term of 21 months from 4 January 1999, noted that of that three months was the mandatory portion, noted that the sentence beyond that was 18 months and ordered that the non-parole period be fixed at nine months to run from 4 April 1999. By so doing the mandatory proportion of the aggregate sentence was identified and left untouched when the non-parole period was fixed in respect of the balance of the sentence.
- [7] It is important, I think, that when sentencing for a number of offences, some of which are property offences, the court be reminded, if necessary, of the provisions of the Act which place restraint on the court's powers regarding

suspension of sentences and fixing of non-parole periods. In that way, the court will be enabled to avoid overlooking the statutory injunctions.

- [8] The parties returned the following day. The Crown submitted that I may have fallen into error and sought to reopen the proceedings upon s 112. The offender did not object to the matter being mentioned again, but argued that there had been no error.
- [9] The supposed error is to be found in my having failed to pay regard to s 52(3). Subsection (1) of s 52 enables a court when there are two or more offences joined in the same indictment, to impose one term of imprisonment in respect of both or all, a course which I adopted. My attention was drawn to the subsection which reads:

“Subject to section 78A, a court must not impose one term of imprisonment under subsection (1) where one of the offences in which the term of imprisonment would be imposed is a property offence.”

- [10] The submission on behalf of the Crown was that that subsection may prohibit a court from imposing one term of imprisonment in the prescribed circumstances if one of the offences was a property offence. That would be so if there be but one property offence carrying a mandatory sentence of, say, 14 days amongst a host of non property offences charged on the one indictment which were a variety of degrees of seriousness. The advantages of the opportunity to fix the single term of imprisonment under s 52 would be lost.

[11] Counsel for the offender submitted that that was not what was intended.

The words “Subject to section 78A” would have no work to do if that was the case. The remaining words would achieve the objective for which the Crown contends.

[12] I can not see any conflict between s 52 and s 78A which could give any operation to those words. Their only purpose must be to remind the court that it must not impose one term of imprisonment where there is a property offence included unless it pays regard to s 78A. That is, the provisions of s 78A must be applied and nothing less than the mandatory sentence may be imposed. It may be, for example, that the non property offences are of a minor nature only warranting a sentence significantly less than that applicable to the property offence. Subsection (3) ensures that the enabling provision in subs(1) is not employed, deliberately or otherwise, so as to ameliorate the sentence for the property offence.

[13] It would be desirable, in my view, if sentencers made it clear that when imposing an aggregate sentence s 78A was applied, and that the mandatory term of imprisonment be identified.

[14] I do not consider that an error was made in the sentence by imposing an aggregate sentence when there were property offences included amongst the charges on the one indictment.

[15] The application to reopen the matter is refused.

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