

PARTIES: (1) ROBERT JAMES  
v  
LLOYD LALARA

(2) PAUL TUDOR-STACK  
v  
LLOYD LALARA

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: Justices Appeal

FILE NO: (1) JA67 of 1998  
(2) JA74 of 1998

HEARING DATES: 2 SEPTEMBER 1998

DELIVERED: 28 SEPTEMBER 1998

JUDGMENT OF: OLNEY J

**CATCHWORDS:**

Statutory Interpretation - *Sentencing Act* 1995 (NT) - Mandatory sentencing for property offences - multiple property offences specified in same information – findings of guilt" to be taken as a single finding of guilt prohibition against concurrent terms not relevant.

Sentencing Act 1995 (NT) s 78A (3A); (4).

Statutory Interpretation - *Sentencing Act* 1995 (NT) - Mandatory sentencing for property offences - repeat offences - imprisonment for another offence - prohibition against concurrent sentences.

Criminal law - jurisdiction, practice and procedure - judgment and punishment – sentence - *Sentencing Act* 1995 (NT) - mandatory sentencing specified in same information - findings of guilt "to be taken as a single finding of guilt" - prohibition against concurrent sentences not relevant.

Criminal law - jurisdiction, practice and procedure - judgment and punishment – sentence - *Sentencing Act* 1995 (NT) - mandatory sentencing for property offences - repeat offences - imprisonment for another offence – prohibition against concurrent sentences.

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

IN THE MATTER of the Justices Act

AND IN THE MATTER of 2 appeals against  
sentence of the Court of Summary  
Jurisdiction  
at Alyangula

JA 67 OF 1998

BETWEEN  
ROBERT JAMES

Appellant

and

LLOYD LALARA

Respondent

JA 74 of 1998

BETWEEN  
PAUL TUDOR-STACK

Appellant

and

LLOYD LALARA

Respondent

Coram: Olney J

REASONS FOR JUDGMENT  
(Delivered 28 September 1998)

These two appeals (which were heard together and with the appeal No JA 70 of 1998)  
are from a decision of Mr G. Cavanagh, Stipendiary Magistrate, sitting in the Court of  
Summary Jurisdiction at Alyangula.

On 16 June 1998 the respondent was charged with, and pleaded guilty to, a total of 15 offences committed (as to 9 offences) on 16 April 1998 and (as to 6 offences) on 3 May 1998.

The offences committed on 3 May 1998 (the 3 May offences) were put to the respondent, and pleaded to, before the offences committed on 16 April 1998 (the 16 April offences).

The 3 May offences were specified in an information charging counts 1, 2 and 3 and a complaint charging counts 4, 5 and 6. The 6 counts can be summarised thus:

- Count 1 - Stealing (contrary to s 210 of the *Criminal Code*)
- Count 2 - Aggravated Unlawful Entry (contrary to s 213 of the *Criminal Code*)
- Count 3 - Stealing (contrary to s 210 of the *Criminal Code*)
- Count 4 - Trespass on Enclosed Premises (contrary to s5 of the *Trespass Act*)
- Count 5 - Bringing Liquor into a Restricted Area (contrary to s 71(1)(a) of the *Liquor Act*)
- Count 6 - Consuming Liquor in a Restricted Area (contrary to s 71(1)(c) of the *Liquor Act*)

The 16 April offences were specified in an information charging counts 1 to 6 (inclusive), a complaint charging counts 7 and 8 and a second information charging count 9. The 9 counts can be summarised thus:

- Count 1 - Unlawful Entry (contrary to s 213 of the *Criminal Code*)
- Count 2 - Stealing (contrary to s 210 of the *Criminal Code*)
- Count 3 - Aggravated Unlawful Use of a Motor Vehicle (contrary to s 218 of the *Criminal Code*)
- Count 4 - Aggravated Unlawful Entry (contrary to s 213 of the *Criminal Code*)
- Count 5 - Aggravated Criminal Damage (contrary to s 251 of the *Criminal Code*)
- Count 6 - Stealing (contrary to s 210 of the *Criminal Code*)
- Count 7 - Bringing Liquor into Restricted Area (contrary to s 75(1)(a) of the *Liquor Act*)
- Count 8 - Consuming Liquor in a Restricted Area (contrary to s 75(1)(c) of the *Liquor Act*)
- Count 9 - Assaulting Police in Execution of Duty (contrary to s 189A of the *Criminal Code*)

It is common cause that each of counts 1 to 6 (inclusive) of the 3 May offences, and each of counts 1 to 3 (inclusive) of the 16 April offences related to a property offence as defined in s 3 and schedule 1 of the *Sentencing Act*; and further, that on two prior occasions since s 78A of the *Sentencing Act* came into operation on 8 March 1997, the respondent had been found guilty of a property offence as so defined. At the time of sentencing the respondent had been in custody since 3 May 1998.

It is a matter of public record that the *Sentencing Amendment Act* 1998 (Act No 14 of 1998), which amended, inter alia, ss 50, 51, 52, 78A and 78B of the *Sentencing Act* came into operation on 29 April 1998, after the 16 April offences were committed but prior to the 3 May offences.

After hearing argument as to the application of the mandatory sentencing provisions of the *Sentencing Act*, and expressing his views thereon, the Magistrate said:

On file number 9809214, those offences committed on the 30<sup>th</sup> (sic, presumably 3rd) of the 5th '98, there's six offences there. The defendant is convicted on each of the offences and on charge number 1 he's convicted and sentenced to 12 months imprisonment. Same order on charges 2 and 3. Those sentences are concurrent and backdated to commence on 3 May 1998. On charges 4, 5 and 6 he's convicted and I impose an aggregate fine of \$300 with three \$20 levies, in default six days imprisonment. No time to pay.

In respect of file number 9807923 on charges 1, 2, 3, 4, 5 and 6 the defendant is convicted and sentenced to 12 months imprisonment on each of the charges. Charges 7 and 8 he's convicted and I impose an aggregate fine of \$300 plus two levies, in default six days imprisonment, no time to pay. On charge number 9 he's convicted and sentenced to four months imprisonment. All sentences concurrent and also concurrent with the sentence on file number 9809214.

The appeal in JA 67 of 1998 relates to the sentences imposed in relation to the 3 May offences. The grounds of appeal as expressed in the notice of appeal are:

1. The learned Magistrate erred in law in ordering that –
  - (i) the sentences in respect of counts 1, 2 and 3 be served concurrently

with each other, such order being contrary to section 78A(3A) of the *Sentencing Act*; and

- (ii) the sentences be served concurrently with the sentences imposed on file 9807923, such order being contrary to section 78A(3A) of the *Sentencing Act*.

(Ground (ii) appears to misrepresent the order actually made by the Magistrate and is not consistent with the passage quoted above from the transcript. It would not have been appropriate when sentencing in respect of the 3 May offences to order that the sentences be served concurrently with sentences which had not then been imposed. The Magistrate did not in fact do so but, in any event nothing turns upon the point).

The appeal in JA 74 of 1998 relates to the sentences imposed in relation to the 16 April offences. In this case the single ground of appeal is:

The learned Magistrate erred in law in ordering that the sentences be served concurrently with the sentences imposed on file 9809214, such order being contrary to section 78A(3A) of the *Sentencing Act*.

In my reasons published in JA 70 of 1998 (*Trenerry v Dowell* I have set out in detail the relevant provisions of s 78A of the *Sentencing Act*.

Prior to the *Sentencing Amendment Act* 1998 (Act No 14 of 1998) coming to operation on 29 April 1998, s 78A did not contain ss (3A) and the appellant accepts that at the time the 16 April offences were committed the court had power to order that sentences imposed on the one occasion in respect of multiple offences be served concurrently. In the facts of this case the appellant takes no issue with the decision in relation to the 16 April offences to order that the sentences imposed in relation to counts 1 to 6 (all being property offences) and count 9 be served concurrently. The sole issue is that the Magistrate had no authority to order that those concurrent sentences be served concurrently with the sentences imposed in relation to the 3 May offences.

By reason of the amendment of s 78A to include ss (3A) the appellant does however dispute the Magistrate's authority to order that the sentences in relation to counts 1 to 3 of the 3 May offences (all being property offences) be served concurrently. The effect of ordering the latter sentences to be served concurrently is the same as the effect of the Magistrate's orders in *Trenerry v Dowell* although the formulation of the sentence was differently expressed. Consistent with the reasons I have expressed in *Trenerry v Dowell* I am of the view that the appropriate sentence to impose in respect of counts 1 to 3 of the 3 May offences was a term of imprisonment for 12 months. Such a sentence would be consistent with s 7SA(4) which requires that for the purposes of s 78A, findings of guilt in relation to two or more property two offences specified in the same indictment be taken as a single finding of guilt. It would also be consistent with both ss (3) and with the overall net effect which the Magistrate intended to achieve in structuring the sentences as he did.

The remaining issue is whether it was open to the Magistrate to order that the sentence imposed in respect of the 16 April offences be served concurrently with the sentence imposed for the 3 May offences. In my opinion he was in error in so ordering. It is not the case that either ss (4) or ss (5) could be called in aid to justify imposing a single term of imprisonment for 12 months in respect of the two series of offences. Whilst it may be that the offences committed on 16 April could be said to have been part of a single criminal enterprise, and that the same could be said of the offences committed on 3 May, there was not one overall single criminal enterprise extending over the whole period. Nor were the 16 April offences specified in the same information as the 3 May offences. If they had been, on the construction of the section which I favour, all the offences would have been dealt with as if there had been a single finding of guilt,

with the consequence that a single mandatory period of imprisonment would have been applicable. But they were not specified in a single information, and indeed there is no reason why they should have been. The two informations and complaint charging the 16 April offences were each sworn on 20 April 1998, shortly after the offences were committed. The respondent was then released on bail. Whilst on bail he committed the 3 May offences and on that day he was taken into custody and charged on information and complaint with those offences. There is nothing sinister or inherently unfair in the fact that the two series of offences were charged in separate informations. The respondent could have been sentenced for the 16 April offences on a day prior to being sentenced for the 3 May offences and if this had occurred there could be no question about the provisions of s 78(3A) applying.

Section 78(3A) contains an absolute prohibition against ordering the mandatory period of a term of imprisonment to be served concurrently in the circumstances to which it applies. Those circumstances are first where a sentence has been imposed pursuant to either ss (1), (2) or (3) of s 78A and second where the offender has been sentenced to imprisonment for another offence. Each of those elements was present in this case.

Once the Magistrate imposed a sentence of imprisonment for the 3 May offences, as he was bound to do, ss (3A) had to be given effect to in the subsequent sentencing for the 16 April offences.

In my opinion, for the reasons I have expressed, the appeals should be resolved in the following manner:

i) Appeal JA 67 of 1998:

Allow the appeal in part; set aside the separate sentences imposed in relation to counts 1, 2 and 3 and substitute a single sentence of imprisonment for 12 months.

ii) Appeal JA 74 of 1998:

Allow the appeal in part; set aside the separate sentences of 12 months imprisonment imposed in respect of each of counts 1 to 6 (inclusive) and substitute a single sentence of 12 months imprisonment in respect of counts 1 to 6 (inclusive); set aside the order that all sentences be served concurrently and also concurrently with the sentence on file number 9809214 and substitute an order that the sentence in respect of counts 1 to 6 (inclusive) and the sentence in respect of count 9 be served concurrently but cumulatively upon any other term of imprisonment to which the respondent has been sentenced.