The Queen v Manolas [2019] NTSC 60

PARTIES:	THE QUEEN
	v
	MANOLAS, George Theo
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NOs:	21713598, 21653294 & 21627328
DELIVERED:	31 July 2019
HEARING DATE:	29 July 2019
JUDGMENT OF:	Riley AJ

CATCHWORDS:

CRIMINAL LAW – STAY OF PROCEEDINGS – DOUBLE JEOPARDY

Application for a permanent stay of proceedings in relation to an indictment charging 113 counts of stealing –Application for an order quashing an indictment – Application dismissed

Criminal Code (NT) s 210(2), s 339

The Queen v Wilton [2018] NTCCA 16

REPRESENTATION:

Counsel:

Applicant:	T Berkley
Respondent:	D Morters SC

Solicitors:

Applicant:	On direct brief
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Manolas [2019] NTSC 60
File Nos. 21713598, 21653294 & 21627328

BETWEEN:

THE QUEEN

AND:

GEORGE THEO MANOLAS

CORAM: RILEY AJ

REASONS FOR JUDGMENT

(Delivered 31 July 2019)

[1] This is an application on behalf of the accused, George Theo Manolas, seeking a permanent stay of proceedings in relation to an indictment dated 29 April 2019 charging him with 113 counts of stealing, contrary to the provisions of s 210(2) of the *Criminal Code*. The accused also seeks an order quashing the indictment.[1]

[2] The accused was originally presented to the Court on an indictment containing 135 counts of stealing a total amount of approximately $519,000. On 3 October 2017 he made an application to the trial judge pursuant to s 339 of the *Criminal Code* to quash the indictment arguing that, because of the number of charges, the indictment was calculated to prejudice or

1 Application made pursuant to s 339 of the *Criminal Code*.

embarrass him in his defence. At the time of the hearing of that application, counsel for the accused submitted that the number of charges in the indictment was "so great that it is necessarily prejudicial and oppressive" and should be reduced and "be placed at a meaningful number". The Crown did not oppose the application and undertook to file an indictment which included 20 counts severed from the original indictment. The accused raised no objection to that course. Such an indictment was filed and the matter proceeded to trial.

[3] At the trial the Crown was permitted to lead evidence of all transactions referred to in the original 135 count indictment as evidencing a course of conduct by the accused. At the conclusion of the trial, the trial judge provided a clear direction that the jury was only concerned with the determination of the 20 counts contained in the indictment. The jury was directed that evidence of the other transactions could be used for the purpose of placing into context the evidence relating to the 20 counts charged and for determining the state of mind of the accused at the time of each of those alleged offences.

[4] At the conclusion of the trial the accused was found guilty of the 20 counts in the severed indictment and, on 24 November 2017, was sentenced to 6 years imprisonment with a non-parole period of three years. He appealed against the sentence to the Court of Criminal Appeal on various grounds. The appeal was dismissed.

[5] Following the trial the Crown presented an indictment dated 18 October 2017 alleging a further 20 counts of stealing which were described as a subset of the 115 transactions that had been relied upon as uncharged acts in the trial. Subsequent to the presentation of that indictment and relying upon the decision of the Court of Criminal Appeal in the matter of *The Queen v Wilton*[2] the Crown resolved to include all of the remaining charges (now numbering 113 counts) in a single indictment which was dated 29 April 2019. It is that indictment which is the subject of this challenge.

[6] It was submitted on behalf of the accused that, in light of the verdict, the evidence of the uncharged acts led at the trial in order to place the conduct of the accused in context can be assumed to have been accepted by the jury. It was submitted that such evidence was of "further examples of theft" and therefore was "part of the findings of guilt handed down by the jury and accepted by the court". It was submitted that the "full record of dishonest transactions were in fact before the court, and had to be taken into account in the sentencing that occurred on 24 November 2017". In addition, it was submitted that to now proceed with the prosecution of the remaining 113 counts would offend the rule against double jeopardy.

[7] In my opinion these submissions are not supported by reference to the trial material. They do not reflect the history of this matter. They suggest a complete misunderstanding of what took place and the consequences of what took place.

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2 [2018] NTCCA 16

[8] As noted above, the accused was originally charged with 135 counts of stealing. As a consequence of his application for severance and a stay, a 20 count indictment consisting of counts severed from the original indictment was presented and the matter proceeded to trial. There was never any suggestion that the 20 counts were to be regarded as representative counts in relation to the remaining allegations. There was never any suggestion or understanding that the outstanding counts would not be pursued.

[9] A separate and successful application was made to the trial judge to allow evidence of the additional transactions to be admitted into evidence as uncharged acts for the purpose of assisting the jury to place into context the alleged offending conduct of the accused. In his unsuccessful appeals against conviction, no challenge was made to that decision nor to the relevant directions provided to the jury by the trial judge at the conclusion of the trial.

[10] The submission made on behalf of the accused that, by acceding to the application for severance made by the accused (which was not opposed by the Crown), the trial judge somehow "abrogated" his responsibility to the accused to ensure the accused was treated fairly was, in my opinion, misconceived. Counsel was not able to develop the submission beyond the bald assertion.

[11] At the time of sentencing the trial judge made it clear that the sentence imposed related to the 20 counts in the indictment and to the sum of

$171,769.63 (being the total relating to those counts) and not to the additional matters. In his unsuccessful appeal against sentence the accused did not contend that the sentencing judge erred by punishing him for acts for which he was not charged. Of course, should the accused subsequently be found guilty in relation to any of the additional matters, the sentence imposed in relation to those matters would necessarily take into account and allow for the sentence imposed by the trial judge in accordance with well-established sentencing principles.

[12] The accused's submission that "the outstanding 113 alleged offences have, in effect, been decided against him by a jury, and he has been sentenced in a process that took the money said to be stolen in those offences into account when the learned sentencing judge dealt with the totality of the offending", is not supported by reference to the relevant material.

[13] As was submitted by the Crown, the defendant was prosecuted on a 20 count indictment as a consequence of the application made by him that the originally presented 135 count indictment should be severed because presentation to a jury of such an indictment would be oppressive or vexatious. He was convicted and sentenced in relation to those 20 counts. Although the jury heard evidence in relation to the additional transactions, this was for the specific and legitimate purposes identified in the application to lead such evidence. In relation to that evidence, it has not been argued that appropriate directions were not provided by the trial judge. Counsel failed to identify any basis in law for the submission made on behalf of the

accused that findings in relation to those matters somehow “passed into judgment”.

[14] The suggestion made by the accused that to now proceed in relation to the outstanding matters from the original indictment would somehow infringe any rule against double jeopardy, cannot be sustained.

[15] In the circumstances I dismissed the application.
