Jenkins v Trigg [2013] NTSC 04

PARTIES:	JENKINS, Trevor
	v
	TRIGG, Daynor
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	No. 76 of 2012 (21244847)
DELIVERED:	31 January 2013
HEARING DATES:	24 January 2013
JUDGMENT OF:	BLOKLAND J

CATCHWORDS:

CRIMINAL LAW – Summary Offences – Statutory Contempt – Procedure – Appeal Against Conviction Dismissed

CRIMINAL LAW – Sentence for Statutory Contempt – No Opportunity to make submissions on sentence – Appeal Allowed – Appellant Re-sentenced

Justices Act (NT) s 46(1)(b)

Ex Parte Bellanto; Re Prior [1963] SR (NSW); *R v K (B)* [1995] 4 SCR 186; *Magroarty v Clauson* (1989) 167 CLR 251; *O'Brien v Northern Territory of Australia* (2003) 12 NTLR 218 referred to

REPRESENTATION:

Counsel:	
Appellant:	Self
Respondent:	Mr Jobson
Solicitors:	
Appellant:	Self
Respondent:	Solicitor for the Northern Territory of Australia
Judgment category classification:	B
Judgment ID Number:	BLO1301
Number of pages:	15

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

Jenkins v Trigg [2013] NTSC 04
No. 76 of 2012 (21244847)

BETWEEN:

TREVOR JENKINS
Appellant

AND:

DAYNOR TRIGG
Respondent

CORAM: BLOKLAND J

REASONS FOR JUDGMENT

(Delivered 31 January 2013)

Introduction

[1] This is an appeal against convictions and a sentence imposed in the Court of Summary Jurisdiction for two counts of contempt of court as provided by s 46(1)(b) *Justices Act* (NT). Relevantly the section makes it an offence for any person "who conducts himself disrespectfully to the Justice sitting."

[2] Importantly the penalty for the offence differs from contempt at common law where the penalty is at large unless otherwise modified by statute. The maximum penalty under s 46(1)(b) *Justices Act* is a fine of $20 or imprisonment for one month. By way of penalty, the learned Magistrate imposed an aggregate sentence of three weeks imprisonment on the

appellant. No part of the sentence was suspended. The appellant has served three days of that sentence in total. He was granted appeal bail in the Court of Summary Jurisdiction.

[3] The appellant was unrepresented both before the Court of Summary Jurisdiction and before this Court on appeal.

[4] The original substantive hearing during which the impugned conduct arose was for a single charge of disorderly behaviour.[1] The appellant was found guilty of that charge, fined and was ordered to pay prosecution costs. No appeal has been filed in relation to the conviction or penalty for that offence. The evidence of the conduct constituting the offences against s 46(1)(b) *Justices Act* appears in the transcript of the hearing of the disorderly behaviour charge on 26 November 2012.

Amended Grounds of Appeal

[5] I am indebted to His Honour Barr J who during an earlier directions hearing effectively settled grounds of appeal and granted the appellant permission to add ground number eleven: 'no opportunity to make submissions on penalty'.[2]

[6] Before this Court the following grounds were advanced in varying degrees of detail:

1. Emotionally vengeful judgment and decision.

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[1] The hearing dates were 21 and 26 November 2012.
[2] Transcript of proceedings, 9 January 2013, 1-24, *Trevor Jenkins v Daynor Trigg*.

2. Overly harsh penalty.

3. Earlier contempt sentence by Justice Morris three days suddenly went three weeks.

4. Said it would allow the appeal but failed to instruct court officers and especially corrections to give fill-in appeal forms and to lodge.

5. Sent me straight to jail even though needed to prepare other case for two days later.

6. I was in custody unlawfully before the contempt charges and thus unlawfully remanded in custody during them.

7. The magistrate failed to take into account that I was unable to call legal advice or prepare evidence.

8. Same magistrate shouldn't be hearing own contempt charges.

9. No opportunity to respond to charges.

10. Kept in custody unlawfully unable to access relevant reference papers – rushed and harassed.

11. No opportunity to make submissions on penalty.

The Basis of the Contempt Charges

[7] From the outset of the hearing of the disorderly behaviour charge it would appear the appellant was disinclined to accept various rulings or procedural steps taken by the learned Magistrate.[3] This escalated on the second day of the hearing,[4] culminating in the learned Magistrate forming the view that the appellant was seeking to use the substantive proceedings for an ulterior

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[3] Eg. T 21 November 2011 at 6, 7, 9, 11, 12, 20, 32, 33, 37, 38.
[4] 26 November 2011.

purpose, namely to question a witness in a manner that amounted to abuse, threats and harassment.[5] His Honour noted a deterioration in the appellant's behaviour during the substantive hearing.[6] While addressing the Court after argument about the relevance of a document,[7] the following exchange occurred between the appellant and His Honour:

MR JENKINS:	We're just worried about whether Trevor told him to fuck off to his face. Well, you're living in a dream world, mate; because that's bullshit and if you're going to keep doing that, I'm gonna go the supreme court. I did this thing last time with Hannah okay; you guys have got to get with the deal. Okay. We're living in cyberspace world where emails and all those sort of things happen and this guys sitting out there laughing his tits off at you guys, because you're screwing with my life and they're screwing my live with emails. Do you understand? I'm being harassed by emails, and you don't want to have it as evidence. Well fuck you. You know I'm sick and tired of it, because it's bullshit. You know. You can't do this to people. Because what's happening is crap ---
HIS HONOUR:	(inaudible) Out. Out.
MR JENKINS:	someone's got to come and harass ---
HIS HONOUR:	Out. Mr Jenkins. You've said to me 'well fuck you'. Do you wish to withdraw that comment?
MR JENKINS:	No, I don't because you get ---

5 Reasons Mr Trigg SM, 28 November 2012, para 7.
6 Reasons Mr Trigg SM, 28 November 2012, para 9.
7 T 26 November 2012 at 77-78.

HIS HONOUR: I ---

MR JENKINS: But, no, you get it right, mate. I don't care.

HIS HONOUR: (inaudible)

MR JENKINS: Well, I'll go for contempt. Because you get it right ---

HIS HONOUR: (inaudible)

MR JENKINS: You know. I've asked you over and over again about emails ---

HIS HONOUR: (inaudible) remand him in custody please.

MR JENKINS: --- emails, emails. I'm sick of it.

HIS HONOUR: Guards now.

MR JENKINS: Go the fuck ahead. I'm fucken happy about it and you can write down why – not getting email evidence and actually not looking at fabrication of evidence and not allow me to call evidence. So you go to the Supreme Court and you look at it, mate. You look at the fact of it.

HIS HONOUR: I charge the defendant with contempt in the face of the court by telling me loudly 'well fuck you'. I gave him the opportunity to withdraw it. He refused to. I remanded the defendant in custody.

We will stand the matter down for half an hour while we see if the defendant is fit to continue. Court's adjourned.

[8] This formed the basis of the first count under s 46(1)(b) *Justices Act* (NT).

[9] Later the same day once again after a ruling on the relevance of certain evidence,[8] the following exchange occurred which formed the basis of the second count:

HIS HONOUR:	I rule it's not. If you're happy with it, you can challenge it in the Supreme Court.
MR JENKINS:	I might do it in the Supreme Court. I'm going to get history heard. Don't you fucking worry about it. I'm going to get this fucking re-heard. You know. No fuck you. You're bullshit. Emails and shit like this has got to be fucking known.
HIS HONOUR:	I will add a charge two to the contempt charge. A second charge and it says 'fuck you and you're bullshit'.
MR JENKINS:	Go all the fuckin way and say 'fuck you for not listening to my fucking evidence' and write 'fuck you, because what you've got do to is to take emails into account because emails are against the law' and write 'fuck you, because you're standing over me making me look like I'm a fucking idiot' righto. And, then say 'fuck you, because you're just harassing me' okay. Write up, say 'fuck you, because you don't need these guys in the court standing over me every week'; 'fuck you for fucking putting me downstairs and making me feel like shit', 'fuck you for not looking at this guy, who could be a paedophile or something else and look into his background' you know and he could come and do what – write it all down, mate. Write it all down so we have a fucking really long fucking case and write down that I say 'fuck you, it doesn't matter', you know because you're not standing over me as a person because I'm free. You know. Fucking oath and fuck isn't even a swear word. It's in the dictionary if you want to get a dictionary out.

8 Transcript 26 November 2012 at 100-101.

HIS HONOUR:	Would you like me to release Mr Gerber or are you going to ---
MR JENKINS:	I'd like another question.
HIS HONOUR:	You're not going to get one at the moment. I'll have to formulate charge 2 in relation to contempt and then I'll have to listen to the tape ---
MR JENKINS:	Do 3, do 4, do 5, do 6; do as many as you fucking like. Write five or six of them, mate. Doesn't fucking worry me, mate. You know. Fucking go for it. Because, you're not executing justice letting this cunt off, mate. Fuck him. You know. Fuck him. You know. He's a fuck-wit and you don't even want to look at him ---
HIS HONOUR:	Take him away ---

[10] It is not at all surprising that given the appellant's language directed to the bench that His Honour formulated charges under s 46(1)(b) *Justices Act*. It is clearly the role of a judicial officer to determine issues of evidence and rule accordingly. The response by the appellant to those rulings clearly constituted conduct disrespectful to His Honour. I see no other way to interpret the appellant's language during the hearing before the Court of Summary Jurisdiction.

The Appeal Against the Convictions

[11] Much of the appellant's argument is directed to perceived shortcomings in the substantive hearing and associated procedures for the disorderly

behaviour charge. Other parts of the argument are directed to unrelated proceedings.[9]

[12] Dealing with the grounds and the arguments advanced, ground one does not assert any error. In the circumstances I would not in any event characterise His Honour's decision as 'emotionally vengeful'. Ground three, along with much of the argument before me seeks to introduce the practice of another Magistrate which although of some comparative interest has no bearing on this case.

[13] Grounds four, five, six and ten do not assert any error in the decision to convict for contempt. Nor do those grounds have any relevance to penalty. I will dismiss grounds 1, 3, 4, 5, 6 and 10.

[14] As to the remaining grounds relevant to the convictions, ground 8 complains the Magistrate "shouldn't be hearing own contempt charges". Section 46(3) *Justices Act* provides the Justice may proceed forthwith to convict the person of the offence, either on their own view or the evidence of another person. As contempt and its statutory equivalents are of a nature unlike most other offences and are intrinsically connected to particular proceedings, there is no requirement they become the subject of discrete proceedings or that they must be heard by another judicial officer.[10] In any event it is well accepted that presiding judicial officers have the power to

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9 Appellant's Written Submissions filed 21 January 2013 pages 1-16; at page 18 the submissions describe proceedings before Ms Morris SM for another contempt charge; at 22 the appellant describes alleged physical abuse by a police officer when in the cells.

10 *Ex Parte Bellanto; Re Prior* [1963] SR (NSW) 190 at 201.4; 202; 203.

deal with contempts in the course of the substantive proceedings. This ground has no basis in law.

[15] In as much as ground 6 alleges the appellant was in "custody unlawfully before the contempt charges", it is clear from the transcript and His Honour's reasons[11] that the charges were laid on each occasion and it was then open to His Honour to remand the appellant in custody. In relation to the first count the remand appeared to be simultaneous with the laying of the charge. This was not a situation like the one that arose in *O'Brien v NT of Australia*[12] where no charge was laid, nor could there have been. In *O'Brien*, Mildren J made it clear a Magistrate can remand a person into custody when a charge has been laid.[13]

[16] In this situation, although His Honour could have sought and heard a bail application, His Honour's reasons make it clear that he had serious concerns about escalation of the appellant's behaviour, the numerous interruptions to the hearing and the effect on other persons involved in the hearing including witnesses.[14] Although courts are encouraged to make sparing use of the power of contempt, even in the case of "setting the court at defiance",[15] given the appellant's conduct on 26 November 2012, there were few other options available to His Honour to enable him to restore order and continue

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11 Reasons of Mr Trigg at para [10].
12 (2003) 12 NTLR 218.
13 *O'Brien* at [48].
14 Reasons [10] – [30].
15 Martin (BR) CJ in *O'Brien v NT of Australia* at [32].

with the hearing. Nothing in this ground affects the substance of the charge or the validity of the conviction.

[17] The appellant alleged in argument[16] he was "rushed", alleging certain Magistrates "collude" in the way they deal with his matters. I do not accept this is what occurred. In relation to both counts of contempt, the learned Magistrate charged the appellant and gave him an opportunity to withdraw the offending remarks. On the first occasion he then adjourned the matter to see if the appellant was fit to continue.[17]

[18] On the second occasion His Honour told the appellant he would be formulating the second charge of contempt.[18] I agree with the observation made on behalf of the respondent that although the charges were laid, clearly the learned Magistrate did not act on them until the conclusion of the substantive hearing. In the interim, the appellant was permitted to participate in the substantive proceedings, although at times from the dock.

[19] His Honour followed the relevant procedure for dealing with offences of this kind. In relation to count 1 the charge was clearly formulated with express reference to s 46(1)(b) *Justices Act* and the conduct that allegedly constituted the charge was clearly described.[19]

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16 Appellant's Written Submissions at 19 and 20.
17 Transcript, 26 November 2012 at 78.
18 Transcript, 26 November 2012 at 101.
19 Transcript, 26 November 2012 at 79. The procedure is identified in *Magroarty v Clauson* (1989) 167 CLR 251, 55-56.

[20] Although His Honour did not identify s 46(1)(b) *Justices Act* when laying the second count, he used the expression 'contempt in the fact of the Court' which given the circumstances, atmospherics and proximity to the conduct comprising count 1, by necessary implication the charge must have been seen to be sourced in s 46(1)(b) *Justices Act*.[20]

[21] There could be no mistake as to what conduct comprised the charges; the requirement for particulars was clearly met.[21]

[22] Further, His Honour asked and persisted in asking the appellant whether there was anything he wished to say in relation to the contempt charges.[22]

[23] The record speaks for itself. My reading of the transcript indicates the appellant was given a number of opportunities to respond to the allegation of contempt. I would dismiss ground nine.

[24] In relation to ground 7, it was clear to His Honour the appellant was unrepresented. The appellant did not, as far as I can see, seek to be represented at the hearing of the contempt charges. Although it may be preferable to adjourn to allow arrangements to be made for legal representation, this must be balanced against the fact the appellant by all appearances seemed to want to represent himself and it is simply unknown whether legal representation would have been made available to him in a reasonable time. The appellant made much of his experience representing

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20 *Macgroarty v Clauson* at 256.

21 Transcript, 26 November 2012 at 79 and 100.

22 Transcript 137 – 138.

himself before other judicial officers both in the Magistrates Court and the Supreme Court. I would not interfere with the convictions for contempt on this ground in this particular case.

[25] In pressured circumstances, it appears to me the correct procedures were followed in relation to the hearing of the s 46(1)(b) *Justices Act* charges. I dismiss the appeal in so far as it relates to the convictions. The appellant's conduct was sustained beyond the parts of transcript that have been extracted above. The appellant had an opportunity to withdraw the offending remarks. It is clear the disrespectful conduct was proven beyond reasonable doubt. I am not persuaded the convictions should be disturbed.

The Grounds of Appeal Against Sentence

[26] Having reviewed the transcript, is it clear ground 11 is made out. In the context of what I consider must have been a frustrating and difficult hearing due to the conduct of the appellant, it appears the appellant was not given the opportunity to make submissions on the appropriate sentence for the findings of guilt under s 46(1)(b) *Justices Act* (NT). That he was unrepresented compounds this particular error.

[27] The respondent has helpfully drawn my attention to the remarks of Lamer CJC in *R v K(B):*[23]

> There is no doubt in my mind that he was amply justified in initiating the summary contempt procedures. I, however, find no justification for foregoing the usual steps, required by natural justice, of putting

[23] [1995] 4 SCR 186 at 197-198.

> the witness on notice that he or she must show cause why they would not be found in contempt of Court, followed by an adjournment which need be no longer than that required to offer the witness an opportunity to be advised by counsel and, if he or she chooses, to be represented by counsel. In addition, upon a finding of contempt there should be an opportunity to have representations made as to what would be an appropriate sentence. This was not done and there was no need to forego all of those steps.

[28] I am persuaded an error has occurred sufficient to warrant intervention. His Honour had clearly formed a view that the appropriate sentence was to be custodial sentence, actually served and for a duration close to the maximum sentence available. The appellant should be re-sentenced with the benefit of submissions. In doing so, I am mindful of the factors taken into account by His Honour.[24] I also have submissions on appeal from the appellant and helpfully also from counsel for the respondent.

[29] I agree with the submission on behalf of the respondent that the *Sentencing Act* (NT) is as relevant to sentencing for this type of offending as to all other offences. His Honour appears to have proceeded on this basis.

[30] The maximum penalty is however one months imprisonment. The gravity of the appellant's conduct, as disrespectful and frustrating as it must have been, must still be assessed within the context of the maximum penalty. Even though the appellant had previously once been dealt with for contempt in unrelated proceedings, in my view the time he has already served in custody with a short period suspended is sufficient to bring home to him and others that people appearing in court cannot behave in this way towards

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[24] Reasons, Mr Trigg SM, 28 November 2012, [35] – [48].

courts and individual judicial officers. This has been made clear to him on appeal.

[31] Most of the subjective features relevant to the appellant have little bearing on the ultimate penalty: he is 48 years of age; he has been in the Northern Territory for about seven years; he has assisted, to his credit various humanitarian programmes. He told this Court he “lives by faith” and receives no benefits. He perceives himself artistically oriented. He accepts and told this Court he was in a state of agitation given his circumstances as he perceived them during the hearing that gave rise to the contempt charges.

Orders

[32] The appeal against the convictions is dismissed.

[33] The convictions of 26 November 2012 for two counts against s 46(1)(b) *Justices Act* are confirmed.

[34] The appeal against sentence is allowed.

[35] The aggregate sentence of three weeks actual imprisonment imposed on 26 November 2012, is quashed.

[36] The appellant is re-sentenced to an aggregate sentence of 7 days imprisonment backdated to 28 January 2013 (to allow for the three days already served), the balance suspended today. I set an operational period of 6 months during which the appellant is not to commit further offences

punishable by imprisonment or he may be ordered to serve the balance of the term.

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