

Leo v The Queen (No 2) [2014] NTCCA 9

PARTIES: LEO, PRISCILLA
v
THE QUEEN

TITLE OF COURT: COURT OF CRIMINAL APPEAL OF
THE NORTHERN TERRITORY

JURISDICTION: CRIMINAL APPEAL FROM THE
SUPREME COURT EXERCISING
TERRITORY JURISDICTION

FILE NO: CA 28 of 2013 (21321030)

DELIVERED: 12 May 2014

HEARING DATES: 10 February 2014

JUDGMENT OF: RILEY CJ, KELLY and HILEY JJ

APPEALED FROM: BLOKLAND J

REPRESENTATION:

Counsel:

Appellant: J Hunyor
Respondent: M Nathan

Solicitors:

Appellant: North Australia Aboriginal Justice
Agency
Respondent: Office of the Director of Public
Prosecutions

Judgment category classification: B
Judgment ID Number: Ril1407
Number of pages: 2

IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Leo v The Queen (No 2) [2014] NTCCA 9
No. CA 28 of 2013

BETWEEN:

PRISCILLA LEO
Appellant

AND:

THE QUEEN
Respondent

CORAM: RILEY CJ, KELLY and HILEY JJ

REASONS FOR JUDGMENT

(Delivered 12 May 2014)

THE COURT:

- [1] On 27 March 2014 this Court allowed the appellant's appeal against sentence. The matter comes back before the Court for resentence.
- [2] A preliminary issue arose as to whether the matter could be remitted to the Supreme Court for resentence. We have concluded that the Court of Criminal Appeal does not have the power to remit and we provide brief reasons for our conclusion.
- [3] The determination of an appeal by the Court of Criminal appeal is governed by s 411 of the *Criminal Code NT*. In relation to an appeal against sentence subsection 411(4) of the Code provides:

On an appeal against sentence the Court, if it is of the opinion that some other sentence, whether more or less severe, is warranted in law and should have been passed, shall quash the sentence and pass such other sentence in substitution therefore and in any other case shall dismiss the appeal.

[4] In our opinion it is clear that the Court does not have power to remit the matter back to the lower court for sentence. This is so regardless of how logical or appropriate such a step may appear to be in a particular case. This view of the section is consistent with the approach adopted by the Court of Appeal of Victoria in relation to a similar legislative provision in *Webber*¹, *Palmieri*² and *Bishop*³.

[5] Following observations made in those decisions the legislature in Victoria amended s 568 of the *Crimes Act 1958* (Vic) on 1 September 1997 to introduce a power to remit for sentence to the Supreme Court and the County Court in the following terms:

(5) Despite subsection 4, on an appeal against sentence the Court of Appeal may, if it thinks that it is appropriate and in the interests of justice to do so, quash the sentence passed at the trial and remit the matter to the trial court.

[6] In our opinion it would be appropriate for the legislature of the Northern Territory to give consideration to a similar amendment to the *Criminal Code* NT. In the absence of a power to remit we proceed to resentence.

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¹ *Webber* (1996) 86 A Crim R 361 at 365.
² *Palmieri* (1997) 91 A Crim R 120 at 137.
³ *Bishop* (unreported, VCA 04 March 1997 313/1996).