

Question No: 33

Question: Northern Territory Supreme Court Appeals

Date: 11/08/92

Member: Mr BELL

To: ATTORNEY-GENERAL

1. What was the outcome of the Crown appeals against verdicts of the Northern Territory Supreme Court in the following calendar years -

- (a) 1987;
- (b) 1988; and
- (c) 1989.

2. Against which verdicts of the Northern Territory Supreme Court did the Crown appeal in -

- (a) 1990; and
- (b) 1991.

3. What was the outcome of the appeals referred to in question 2.

4. What is the basis on which Crown appeals are conducted.

ANSWER

NORTHERN TERRITORY SUPREME COURT APPEALS - CRIMINAL

1. The Crown has no right of appeal in respect of a verdict of acquittal recorded in the Supreme Court.

The outcome of Crown appeals to the Court of Criminal Appeal against sentences imposed by the Supreme Court were -

- (a) In 1987: 5 - 3 allowed (as to part), 2 dismissed;
- (b) In 1988: Nil;
- (c) In 1989: 1 - dismissed.

2. The Crown appealed to the Court of Criminal Appeal against sentences imposed in the Supreme Court in the following cases in -

1990 (3 cases - 5 accused)

- (i) Bruce RAGGETT;
Roy DOUGLAS; and
Cedric MILLER.
- (ii) Eric MULHOLLAND.
- (iii) Phillip BABUI.

1991 Neil INKAMALA MINOR.

3. The outcome of the appeals referred to in question 2 is as follows -

1990 Bruce RAGGETT - appeal allowed. Sentence of 8 years with non-parole period

of 3 years set aside. Sentenced to 10 years with non-parole period of 5 years.

Roy DOUGLAS - appeal allowed (as to part). Sentence increased from 5 years to 7 years but non-parole period of 2 years to remain as fixed by the trial judge.

Cedric MILLER - appeal allowed (as to part). Sentence of 4 years increased to 5 years but non-parole period of 18 months as fixed by trial judge to remain.

Eric MULHOLLAND - appeal allowed. Appeal against non-parole period of 4 years allowed. Non-parole period of 6 years fixed.

Phillip BABUI - appeal allowed. Appeal against non-parole period of 5 years allowed. Non-parole period of 7 years fixed.

1991 Neil INKAMALA MINOR - appeal allowed (as to part) otherwise dismissed. Period of good behaviour bond increased from 4 years to 6 years.

4. The Crown's right of appeal from decisions of the Supreme Court to the Court of Criminal Appeal in criminal matters is confined to appeals against sentence only.

The basis on which appeals are conducted is publicly stated in the 'Director of Public Prosecutions' Guidelines for Appeals Against Inadequacy of Sentence' tabled in the Legislative Assembly of the Northern Territory in September 1991 and reproduced in the First Annual Report of the Director of Public Prosecutions 1991 at pages 23 and 24 (a copy of which is annexed hereto).

NORTHERN TERRITORY SUPREME COURT APPEALS - CIVIL

1. (a) In 1987: 1 dismissed;
1 Notice of Discontinuance filed.
(b) In 1988: Nil.
(c) In 1989: 1 dismissed.

2. (a) In 1990:
(i) Commissioner of Taxes v Tangentyere Council Incorporated.
(ii) Northern Territory of Australia v Neil Harrison Benton.

(b) In 1991: Nil.

3. (a) In 1990:
(i) Commissioner of Taxes v Tangentyere Council Incorporated - appeal allowed.
(ii) Northern Territory of Australia v Neil Harrison Benton - Notice of Discontinuance filed.

(b) In 1991: Nil.

4. The Crown and any other party to a civil proceeding in the Supreme Court of the Northern Territory has a right of appeal to the Court of Appeal of the Northern Territory of Australia against decisions in respect of which it is aggrieved, in accordance with the provisions of the Supreme Court Act. Such appeals are conducted in accordance with the provisions of the act and the Supreme Court Rules.

ANNEXE A.

GUIDELINES FOR APPEALS AGAINST INADEQUACY OF SENTENCE

The Director is empowered to appeal against the inadequacy of sentences which have been imposed. Time limits exist within which an appeal by the Director of Public Prosecutions against the inadequacy of a sentence must be instituted. On a number of occasions representations have been received outside the statutory time limit. The time limit is 28 days. It follows that persons (be they police, politicians or members of the general public) who seek to bring particular cases to the notice of the Director should do so expeditiously.

Apart from the above-mentioned time constraint other factors must be considered. All of the relevant material must be obtained and analysed and in the cases of appeals to the Supreme Court and the Court of Criminal Appeal the views of a Crown Prosecutor obtained.

In any event, as a matter of fairness, those persons at risk of an appeal by the Director ought to be notified of their fate as swiftly as possible. Whether particular sentences are adequate or whether they should be the subject of an appeal is a topic which frequently attracts public interest. It is appropriate therefore that I enunciate the legal factors which govern the appellate process.

The sentencing function of the Court involves elements of retribution, deterrence (special and general), and rehabilitation and is extremely complex. In sentencing for an offence, a trial judge or magistrate will be faced with a wide spectrum of sentencing options ranging from a bond or community service to imprisonment.

The sentence for a specific offence will vary according to its nature, the circumstances of its commission, the antecedents of the prisoner, and indeed the viewpoint of the particular judge or magistrate who must deal with the accused. Consequently, for any given offence there exists a range of legitimate penalty options. An appellate court will not interfere with the exercise of a judge's or magistrate's sentencing discretion unless an error in the exercise of that discretion can be demonstrated. In practical terms the court must be satisfied that the sentence imposed falls clearly outside the appropriate penalty range and may consequently be characterised as manifestly inadequate.

Mere disagreement with the sentence passed is insufficient.

Furthermore, appellate courts have long maintained that Crown appeals should be a rarity instituted for the purposes of enabling the courts to maintain adequate standards of punishment, to correct idiosyncratic views of individual judges as to particular crimes or classes of crime and to remedy those sentences which are so disproportionate to the seriousness of the offence as to shock the public conscience.

It should be understood that any decision by the Director to appeal against the sentence imposed by a court can only be made within the context of these legal principles.

ANNEXE A.

In addition I would make the following general comments. It appears that there is a current community view that offences which involve a disregard of the value of human life, the invasion of the physical integrity of individuals and the infliction of high levels of fear and violence upon them, warrant condign penalties. There is also a concern which should not be cursorily dismissed that this viewpoint is not being

sufficiently embraced by the courts. Experience does indicate that the sentencing range for particular offences does alter over time to reflect community concern at their prevalence or seriousness. It is neither appropriate nor possible for a Director of Public Prosecutions to seek unilaterally by a succession of appeals to alter the range or tariff for a specific offence. Ultimately, any change in sentencing levels must be achieved either by legislative intervention or must be judicially initiated.