

43/78

COUNTY COURT OF VICTORIA

Re: BRIAN LESLIE CLOUTON

Judge Forrest

25 August 1978

SENTENCING – CHARGES LAID UNDER COMMONWEALTH CRIMES ACT – APPROACH TO BE TAKEN BY A STATE COURT WHEN SENTENCING A FEDERAL OFFENDER – FIXING OF MINIMUM TERMS – WHETHER MINIMUM TERM TO BE FIXED FOR EACH OFFENCE: COMMONWEALTH PRISONERS' ACT 1967 S4(1); SOCIAL WELFARE ACT 1970, S190(1).

1. When a State Court is sentencing a Federal offender and considering fixing a minimum term of imprisonment, section 4(1) of the *Commonwealth Prisoners' Act* 1967 applies, and the offender is to be treated as if he were a State offender in relation to the fixing of minimum terms. S190(1) of the *Social Welfare Act* 1970 provides that a Court is not permitted to fix a minimum term unless the term of imprisonment imposed for the offence is of at least twelve months duration and that the minimum term imposed must be at least six months less than the full term imposed.

2. However, s4(4) of the *Commonwealth Prisoners' Act* 1967 overrode this provision and it is therefore necessary for a State Court, when sentencing a Federal offender, to fix a minimum term upon each offence. It would appear therefore that where an offender is sentenced for more than one offence, and the maximum penalty which a Court can impose for the offence is less than twelve months, no minimum term can be fixed.

The applicant was sentenced to 6 months' imprisonment on each of 31 informations laid under *Commonwealth Crimes Act* with a minimum term of 3 months fixed in respect of each sentence. The first 8 terms were to be served cumulatively whilst the remaining 23 informations were to be served concurrently with each other and also with the first 8 terms. The Magistrate intended to achieve an effective 4 year sentence with a 2 year minimum.

Gaol authorities intimated that they regarded the minimum terms fixed was not a valid exercise of the Magistrate's powers. The prisoner appealed to the County Court and the Magistrate requested that the Judge give a definitive ruling on the interpretation of the *Commonwealth Prisoners' Act* 1967 and Victorian *Social Welfare Act* 1970 in relation to the fixing of minimum terms. As His Honour considered that a decision of a single Judge of the County Court was not binding on Magistrates' Courts, he was not prepared to accede to such application.

However His Honour allowed the Appeal against sentence but re-sentenced the prisoner to twelve months on each of the thirty-one Informations, fixing a minimum term of six months to be served upon each information. His Honour further directed that four terms of imprisonment be served cumulatively while the remaining twenty seven terms of imprisonment be served concurrently with those already being served. The effect of His Honour's order was therefore that the prisoner serve a term of imprisonment of four years, with a period of two years to be served before being eligible for parole.

The basis of His Honour's ruling was that when a State Court is sentencing a Federal offender and considering fixing a minimum term of imprisonment, section 4(1) of the *Commonwealth Prisoners' Act* 1967 is applicable, and the offender is to be treated as if he were a State offender in relation to the fixing of minimum terms. His Honour then found that the relevant State provisions were to be found in s190(1) of the *Social Welfare Act* 1970. His Honour ruled that, pursuant to this sub-section, a Court is not permitted to fix a minimum term unless the term of imprisonment imposed for the offence is of at least twelve months duration and furthermore that the minimum term imposed must be at least six months less than the full term imposed. His Honour found therefore that the fixing of a minimum term of three months upon a term of imprisonment of six months was invalid for two reasons namely, that the sentence was less than twelve months and that the minimum terms fixed was only three months less than the full sentence imposed.

Whereas s190(2) of the *Social Welfare Act* 1970 provides for the aggregating of terms of imprisonment and the fixing of one minimum term with respect to the aggregate, His Honour found that s4(4) of the *Commonwealth Prisoners' Act* 1967 overrode this provision and it is therefore necessary for a State Court, when sentencing a Federal offender, to fix a minimum term upon each offence. It would appear therefore that where an offender is sentenced for more than one offence, and the maximum penalty which a Court can impose for the offence is less than twelve months, no minimum term can be fixed. His Honour expressed his dissatisfaction at this interpretation of the legislation and commented, *inter alia* that the Victorian provision as to the fixing of one minimum term upon aggregate terms of imprisonment has worked very satisfactorily.
