30/89

SUPREME COURT OF TASMANIA

WANDERS v GIBSON

Cox J

21, 29 April 1986 — (1986) 84 FLR 163; [1986] Tas R (NC) N8

CRIMINAL LAW – SENTENCING – SOCIAL SECURITY BENEFITS – OBTAINING BENEFITS FALSELY – SENTENCING CONSIDERATIONS – WHETHER CUSTODIAL SENTENCE APPROPRIATE: *SOCIAL SECURITY ACT* 1947 (CTH.), S138(1).

Where over a period of six months, a person illegally obtained the sum of $4200 in welfare benefits, an unsuspended sentence of 85 days' imprisonment was not manifestly excessive.

***Laxton v Justice* (1985) 38 SASR 376, referred to.**

COX J: *[After setting out the facts, the nature of the charges, the offender's circumstances and the remarks made by the Magistrate when passing sentence, His Honour continued]* ... **[167]** It was then argued that the sentence imposed on each charge and when taken together in the aggregate, the total period of imprisonment to which he was made subject was manifestly excessive.

Offences of this kind have been considered by the Supreme Court of South Australia on a number of occasions. The latest case of which I am aware is *Laxton v Justice* (1985) 38 SASR 376 where Olsson J dismissed the prosecutor's appeal against the alleged inadequacy of a single penalty of four months' imprisonment with a direction pursuant to s20 of the *Crimes Act* 1914 (Cth) as amended, that he be released after serving twenty-eight days imprisonment on entering into a bond in the sum of $100 for one year to be of good behaviour, and be under the supervision of a probation officer. The respondent had pleaded guilty to seventeen similar offences involving the fraudulent receipt of $1,802 by way of unemployment benefit. It appears he had an "unenviable record of prior convictions for a variety of offences", and had fraudulently declared that he had a fictitious "de facto" wife and child.

Olsson J reviewed a number of earlier cases including *Taormina v Cameron* (1980) 24 SASR 59; (1980) 29 ALR 151 and *Scott v Cameron* (1980) 26 SASR 321; (1980) 48 FLR 274, distilling therefrom the following principles (at 381).

> "(1) Offences of this type are now prevalent. The offence is difficult to detect and penalties should reflect a concern for the protection of the revenue.
>
> (2) Frauds of this kind must be viewed seriously because they threaten the basis of the social security system which is designed to provide financial security for those in the community who are in need. A deterrent penalty is called for.
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> **[168]** (3) It is relevant to regard a continuing series of frauds of this type as increasing the moral blameworthiness of the offender's deceits by way of contrast with single or short term offences.
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> (4) Whilst it may be proper in cases of first offences of this type accompanied by mitigating circumstances to impose a fine, nevertheless a custodial sentence may well be appropriate in the case of serious frauds unaccompanied by substantial mitigating circumstances."

His Honour concluded that the magistrate had extended the maximum possible leniency to the respondent but had done so on a rational basis having regard to the circumstances of the case, including the optimism of the probation officer. He was not accordingly persuaded to interfere. In the present case the appellant is not a "youthful first offender" as that expression has been used in a number of cases including that of the oft-cited *Lahey v Sanderson* [1959] Tas SR 17. He is a man with a reasonable background who has served in the Tasmania Police Force and who must fully have realised the unlawfulness and moral turpitude of his actions. This was not an isolated fall from grace. Over a period exceeding six months he deliberately defrauded the

Department of considerable public funds amounting to $4,200 while he, and at times his wife, were both in receipt of income. In my view the learned magistrate was right to express concern that others like minded might be encouraged to act as the appellant did if in the absence of substantial mitigating circumstances a light or nominal penalty were imposed. He was justified having regard to his perception of the prevalence of offences of this kind [a prevalence which was demonstrated to me by the statistics handed up by the consent of both parties] in seeing as a dominant factor the need for a sentence which would operate as a general deterrent. In my view the mitigating circumstances, including the relative staleness of the matter, were not such as to require a non-custodial sentence. It cannot be said that the learned magistrate wrongly exercised his discretion by imposing such a sentence on each offence nor in making each cumulative upon its predecessor, provided that in total the sentences to be served did not become disproportionate to the whole of the appellant's wrongdoing. To my mind a sentence of a little less than three months' imprisonment cannot be said in all the circumstances to be manifestly excessive for repeated dishonest conduct involving the acquisition of such a large amount of money destined for the alleviation of genuine misfortune.

It was also submitted that the learned magistrate ought to have considered a conditional release of the appellant under s20 of the *Crimes Act* 1914. Suffice it to say that there is no ground for supposing that the learned magistrate was not fully conscious of his powers under this section, but that in determining as a deterrent sentence one aggregating nearly three months' imprisonment, he concluded that the exercise of such a discretion would be inappropriate. It cannot be said that he was wrong in the circumstances not to avail himself of the discretionary powers that section gives. The appeal must be dismissed.
