02/01; [2000] VSCA 226

SUPREME COURT OF VICTORIA — COURT OF APPEAL

R v BICE & ANOR

Ormiston and Callaway JJ A and Smith AJ A

22 November, 6 December 2000 — [2001] 2 VR 364

SENTENCING – SUSPENDED SENTENCE OF IMPRISONMENT IMPOSED – SENTENCE BREACHED BY FURTHER OFFENDING – POWERS OF COURT IN DEALING WITH BREACH PROCEEDINGS – WHETHER COURT MAY ORDER THAT THE SENTENCE HELD IN SUSPENSE BE SERVED BY WAY OF AN INTENSIVE CORRECTION ORDER: *SENTENCING ACT* 1991, SS7, 19, 26, 27, 29, 31.

Section 27 of the *Sentencing Act* 1991 provides that a court must not impose a suspended sentence of imprisonment unless the sentence of imprisonment, if unsuspended, would be appropriate. A court imposing a suspended sentence is required to take into account all the relevant circumstances, whether of the offence or of the offender and whether of aggravation or mitigation and to conclude that the sentence of imprisonment proposed to be suspended is warranted. When this task is performed by the court there is no occasion to perform it again or to reconsider the sentencing disposition on breach. The concept is a suspended sentence not suspended sentencing. Accordingly, in proceedings for breach of a suspended sentence, a judge was in error in ordering (in the absence of exceptional circumstances) that the sentence held in suspense be served by way of an Intensive Correction Order.

***R v Bice and Anor*, MC12/00; [2000] VSC 223; 112 A Crim R 260, reversed.**

ORMISTON JA:

1. In considering this appeal I have had the benefit of reading the reasons of Callaway JA in draft form and, for the reasons he expresses, I am of opinion that the appeal should be allowed. I also agree with his observations about whether the sentencing judge might now, in the light of what has occurred, consider whether "exceptional circumstances" have arisen within the meaning of s31(5A) of the *Sentencing Act* 1991, as described in the penultimate paragraph of the judgment of Callaway JA. However, in the absence of exceptional circumstances when the order under s31(5) was originally made, which appears to have been the finding of the learned sentencing judge at that time, the judge was obliged by reason of sub-ss(5) and (5A) of s31 to "restore" the original sentence of imprisonment which had been in unqualified terms. Further, I agree with Callaway JA, although I have not found the point easy, that s27 and the other related provisions concerning suspended sentences do not contemplate that certain other orders, such as intensive correction orders, may be the subject of suspension, notwithstanding that for many purposes they are treated as sentences of imprisonment. I should add that, although the recent decision of the High Court in *Dinsdale v The Queen*[1] was mentioned in argument, it was not suggested that anything said in the judgments of the court should bear on any of the issues on this appeal.

CALLAWAY JA:

2. The first respondent, to whom I shall hereafter refer simply as "the respondent",[2] was convicted and sentenced in the Magistrates' Court on two charges of trafficking in cannabis L. She appealed pursuant to s83 of the *Magistrates' Court Act* 1989 and was re-sentenced in the County Court on 5th March 1997. A sentence of three months' imprisonment was imposed on each charge. A direction for cumulation resulted in a total effective sentence of six months' imprisonment, which was wholly suspended for an operational period of two years. The respondent committed offences punishable by imprisonment within that period and, on 10th September 1999, was brought up before the learned judge who had sentenced her in 1997 to be dealt with on breach of the suspended sentence.

3. Section 31(5) of the *Sentencing Act* 1991 gave his Honour a discretion to impose a fine for the breach. In addition it required him to –

> "(a) restore the sentence or part sentence held in suspense and order the offender to serve it; or
>
> (b) restore part of the sentence or part sentence held in suspense and order the offender to serve it; or

> (c) in the case of a wholly suspended sentence, extend the period of the order suspending the sentence to a date not later than 12 months after the date of the order under this sub-section; or
>
> (d) make no order with respect to the suspended sentence. "

Sub-section (5A) obliged him to adopt the first of those four options unless he was of opinion "that it would be unjust to do so in view of any exceptional circumstances which [had] arisen since the order suspending the sentence was made".

4. The disposition in the Magistrates' Court in respect of the subsequent offences had been a sentence of eight months' imprisonment to be served by way of intensive correction pursuant to s19 of the *Sentencing Act*. The learned judge was provided not only with a report concerning the respondent's progress under the intensive correction order imposed by the Magistrates' Court but also, we were informed on the hearing of the appeal, with a pre-sentence report that would satisfy s19(1)(b) if service of the suspended sentence by way of intensive correction were ordered.

5. His Honour was not satisfied that there were exceptional circumstances of the kind referred to in s31(5A). Accordingly he was obliged to "restore" the sentence of six months' imprisonment and "order [the respondent] to serve it". He did restore the sentence, or purported to do so, but ordered the respondent to serve it by way of intensive correction. That order was made on 12th October 1999. His Honour gave careful reasons for concluding that the course he adopted was open to him when s31(5)(a) was read in context and, in particular, when it was read in conjunction with ss19 and 26.

6. The appellant filed an originating motion in the Supreme Court seeking declarations to the effect that the County Court did not have jurisdiction to order that a restored sentence of imprisonment be served by way of intensive correction and relief in the nature of certiorari. On 2nd June 2000 a judge of the Trial Division dismissed that application. His Honour also gave considered reasons, again concluding that, although s31(5)(a) might require a sentence of imprisonment to be restored, it said nothing as to the manner in which an offender might be required to serve it. Like the learned County Court judge, his Honour referred to other provisions of the *Sentencing Act* that he considered to be either *in pari materia* or to throw light on the meaning of "a term of imprisonment" in s27(1). It is from that decision that the present appeal is brought.

7. We were told that its resolution is a matter of some urgency because a number of proceedings have been adjourned pending our decision. These reasons are therefore more concise than they might otherwise have been.

8. It is, none the less, desirable to set out the whole of s27, except sub-s(9), which relates to suspended sentences imposed by this Court on appeal. The other sub-sections read:

> "(1) On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or a part of the sentence if it is satisfied that it is desirable to do so in the circumstances.
> (2) A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is convicted of more than one offence in the proceeding— (a) does not exceed 3 years in the case of the Supreme Court or the County Court; and (b) does not exceed 2 years in the case of the Magistrates' Court.
> (2A) The period for which the whole or a part of a sentence of imprisonment may be suspended is— (a) the length of the suspended term of imprisonment; or (b) another period specified by the court not exceeding 3 years, in the case of the Supreme Court or the County Court, or 2 years, in the case of the Magistrates' Court— whichever is the longer.
> (3) A court must not impose a suspended sentence of imprisonment unless the sentence of imprisonment, if unsuspended, would be appropriate in the circumstances having regard to the provisions of this Act.
> (4) A court proposing to make an order suspending a sentence of imprisonment must before making the order explain, or cause to be explained, to the offender in language likely to be readily understood by him or her— (a) the purpose and effect of the proposed order; and (b) the consequences that may follow if he or she commits, whether in or outside Victoria, another offence punishable by imprisonment during the operational period of the sentence.
> (5) A wholly suspended sentence of imprisonment must be taken to be a sentence of imprisonment for the purposes of all enactments except any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits.

(7)[3] If under section 31 an offender is ordered to serve the whole or part of a wholly suspended sentence of imprisonment then, for the purposes of any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits the offender must be taken to have been sentenced to imprisonment on the day on which the order was made under that section.
(8) A partly suspended sentence of imprisonment must be taken for all purposes to be a sentence of imprisonment for the whole term stated by the court."

9. The *Sentencing Act* was amended by the *Sentencing and Other Acts (Amendment) Act* 1997. Important changes were made to both ss27 and 31[4]. Both sides argued the appeal by reference to the provisions as they now stand, a course that may well have been justified having regard to the authorities of which *Commissioner of Stamps (SA) v Telegraph Investment Co Pty Ltd*[5] is perhaps the best known, but I would reach the same conclusion even if it were necessary to consider ss27 and 31, or any other relevant provisions, in the form in which they were originally enacted or stood at any material time.

10. Section 27(1) shows that it is only when a court is sentencing an offender to "a term of imprisonment" that the court may suspend the sentence. Mr Just's principal submission was that that expression, used without qualification, means a term which, but for the suspension, would be served in prison[6] and does not extend to a term of imprisonment to be served partly in custody and partly in the community ("a combined custody and treatment order")[7] or to a term of imprisonment to be served by way of intensive correction in the community ("an intensive correction order")[8]. Accordingly, so the submission proceeded, any sentence that had to be "restored" pursuant to s31(5)(a), because there were no exceptional circumstances, was necessarily a term to be served in prison. To order the term to be served by way of intensive correction, as had been done in the present case, would not be to restore the sentence held in suspense but to vary it.

11. Mr Burnside advanced two principal submissions. The first was that, although the judge was obliged, in the absence of exceptional circumstances, to restore the sentence that he had earlier imposed and order the respondent to serve it, s31(5)(a) said nothing about how that sentence was to be served. Accordingly it was open to his Honour to order the term of six months' imprisonment to be served by way of intensive correction. His second principal submission was that "a term of imprisonment" in s27(1) was not limited to a term which, but for the suspension, would be served in prison but included combined custody and treatment orders and intensive correction orders. He contended that, unless one or other of those submissions was accepted, ss27 and 31 would contain anomalies and produce injustice.

12. It would not assist the respondent for us to accept Mr Burnside's second submission. Even if s27(1) does permit a combined custody and treatment order or an intensive correction order to be suspended, on the footing that each of them is a term of imprisonment[9], neither of those dispositions was adopted on 5th March 1997. The respondent was sentenced to six months' imprisonment. It is clear that, but for the suspension, that term would have been served in prison. I do not infer that his Honour decided only on imprisonment, with no thought as to the mode of service, leaving that to be decided in the event of breach. We were told that some judges and magistrates[10] do adopt that course and it was suggested that that is permissible. I shall say more about that when I return to Mr Burnside's second principal submission.

13. I do not accept that, unless one or other of Mr Burnside's principal submissions is accepted, ss27 and 31 contain anomalies or produce injustice. Section 27(3) provides that a court must not impose a suspended sentence of imprisonment unless the sentence of imprisonment, if unsuspended, would be appropriate. That provision is of vital importance and discloses an essential feature of a suspended sentence. If s27(3) is faithfully applied, there will, subject to one qualification, be no injustice if the sentence is restored on breach, because *ex hypothesi* it was an appropriate sentence. It is simply that the offender was given one last chance to avoid serving the sentence.[11] The qualification is that circumstances may change between the time of sentence and the time the offender is dealt with on breach, but the legislature has expressly addressed that topic in s31(5A).[12]

14. Mr Burnside contended that justice might require a suspended sentence of imprisonment to be served by way of intensive correction even in the absence of exceptional circumstances. He

gave the example of a sentence that was breached on the last day of the operational period and said that the harshness of its being restored could be mitigated by its being ordered to be served by way of intensive correction. That submission breaks down at a number of points. First, the assumption may very well be correct that the proximity of the breach to the end of the operational period could not, on its own, amount to exceptional circumstances.[13] If that is so, it is inconsistent with the 1997 amendments to say that restoration is harsh or unjust. Secondly, an intensive correction order is available only if the sentence of imprisonment is of not more than one year.[14] A suspended sentence of imprisonment imposed by the Supreme Court or the County Court may be as long as three years.[15] Thirdly, to order a sentence of imprisonment to be served by way of intensive correction in the circumstances proposed by counsel would be a misuse of the intensive correction provisions.

15. A judge imposing a suspended sentence is required by s27(3) to take into account all the relevant circumstances, whether of the offence or of the offender and whether of aggravation or mitigation, and to conclude that the sentence of imprisonment that he or she proposes to suspend is warranted. If the task is properly performed, there is no occasion to perform it again or to reconsider the sentencing disposition on breach. That is why s31(5) affords four options only, in contrast with the list of available sentencing orders in s7(1), and why s31 has always confined attention to circumstances which have arisen since the suspended sentence was imposed.[16] It would be anomalous if the judge could engage in re-sentencing to the limited extent of substituting[17] a combined custody and treatment order or an intensive correction order but no other disposition.

16. So to conclude is not inconsistent with the observations I made, with the concurrence of Batt JA, in *R v Hatch*[18]. The head sentence cannot be re-visited, but a non-parole period may be fixed in an appropriate case, because the restoration of the sentence is the first occasion on which that question falls to be considered. That is why Mr Burnside's second principal submission, concerning the alleged breadth of s27(1), does not assist the respondent. A head sentence of six months' imprisonment was imposed and the head sentence cannot be reconsidered.

17. I return to the suggestion that it is permissible for a judge to decide on a term of imprisonment with no thought as to the mode of service, leaving that to be decided only in the event of breach. That course would not be consistent with the scheme of ss27 and 31 as I understand those sections and it would fragment the plea in relation to the head sentence. Ordinarily the offender is brought up before the same judge on breach, but memories fade and a re-reading of the transcript of the plea, even where it is available, is not as satisfactory as recalling the way in which counsel presented it orally. In some cases the original judge is unavailable to deal with the breach. In those cases, if the suggestion were correct, the plea would have to be conducted again.

18. The concept is a suspended sentence, not suspended sentencing.[19]

19. Although it may be strictly unnecessary to decide the point, I think I should express a view on Mr Burnside's second principal submission, especially as that view reinforces the conclusions I have reached above. In my opinion "a term of imprisonment" in s27(1) does mean, as Mr Just contended, a term which, but for the suspension, would be served in prison. It is a term of imprisonment of the kind referred to in s7(1)(a). It does not extend to a combined custody and treatment order or to an intensive correction order. Each of the latter dispositions requires a pre-sentence report.[20] The purposes of such reports include establishing the offender's suitability for the order being considered and that any necessary facilities then exist.[21] It would be contrary to the scheme of the provisions relating to such orders for a pre-sentence report to be received with a view to suspending the sentence.

20. Section 7 provides in part:

> "(1) If a court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence and subject to this Part—
> (a) record a conviction and order that the offender serve a term of imprisonment; or (ab) record a conviction and order that the offender serve a term of imprisonment partly in custody and partly in the community (a combined custody and treatment order); or ...
>
> (b) record a conviction and order that the offender serve a term of imprisonment by way of intensive

> correction in the community (an intensive correction order); or (c) record a conviction and order that the offender serve a term of imprisonment that is suspended by it wholly or partly;"

21. There are ten other sentencing orders listed in s7(1).[22] It is possible to combine some of them. A fine may be imposed, for example, together with a sentence of imprisonment or other disposition.[23] But it is not possible to combine any of the four sentencing orders that I have set out above in a hybrid fashion. In particular, paragraphs (b) and (c) are alternatives. That is the natural reading of the section. It is the contrary reading, for which Mr Burnside contended, that would produce anomalies.

22. Reference was made to a large number of provisions which, because of their language, were said to imply that the expression "a term of imprisonment" in s27 is quite general in character and extends to any term of imprisonment however it may be served. To my mind each of those provisions is explained by the different context in which it appears or by differences in drafting. In particular, the words "order the offender to serve in custody the whole part of the sentence that was to be served in the community" in s18W(5)(b) and "commit the offender to prison for the [unexpired] portion of the term of imprisonment" in s26(3A) are appropriate to combined custody and treatment orders and intensive correction orders respectively and were necessary because the simple expression "restore the sentence" would have been inapt and "confinement" comprehends a sentence of detention as well as imprisonment.[24]

23. More importantly, however, if the character of a suspended sentence is borne in mind, it would require a very clear contrary indication in other provisions of the Act to displace the conclusions —

> (a) that the whole of the sentencing task in regard to the head sentence must be performed following the plea;
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> (b) that a sentence of imprisonment then imposed must be one which, if unsuspended, would be appropriate;
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> (c) that restoration pursuant to s.31(5)(a) does not involve re-sentencing; and
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> (d) that, absent exceptional circumstances, there is no injustice if an offender to whom one last chance was extended is, on breach, required to serve the sentence.

24. Sections 19(5) and 27(5) and (7) provide further support for the view that "a term of imprisonment" in s27(1) means a term which, but for the suspension, would be served in prison. Section 19(5) is the same as s27(5), with the substitution of "An intensive correction order" for "A wholly suspended sentence of imprisonment" at the beginning of the sub-section.[25] Section 27(7) provides that, if on breach an offender is ordered to serve the whole or part of a wholly suspended sentence of imprisonment, then, for the purpose of any enactment providing for disqualification or the like, the offender must be taken to have been sentenced to imprisonment on the day on which the order was made under s31. That plainly contemplates that the offender will now, under s31, be sent to prison and not permitted to serve the sentence by way of intensive correction.

25. The notice of appeal does not seek either of the declarations prayed for in the originating motion but only, in addition to ancillary orders, an order that the matter be remitted to the County Court to hear and determine according to law. In my opinion that should be done, but it will first be necessary to quash the order made on 12th October 1999.[26] The appellant properly concedes that, when the matter returns to the County Court, it would be open to that court to consider that there are now exceptional circumstances of the kind referred to in s31(5A). Not only has the respondent had her hopes raised twice, now to be dashed by this decision, but also, we were informed, she has served the whole of the sentence by way of intensive correction.[27]

26. Before parting with this case, I desire to emphasize once again how important it is for the sentencing task to be performed in faithful compliance with s27(3). I do not doubt that it was so performed on the present occasion. That is why there would have been no injustice in restoring the sentence originally imposed. This case also reinforces the importance of a clear explanation to the offender in compliance with s27(4). I refer to, without repeating, what was said by Phillips CJ on that subject in *DPP v Singh*[28].

SMITH AJA:

27. I have had the advantage of reading the reasons for judgment of Callaway JA in draft. I agree generally with those reasons and that the appeal should be allowed. I wish, however, to make some additional comments.

28. I see the critical issue as being the construction of ss31(5) and 5(A) and s19(1) of the *Sentencing Act* 1991 (the Act).

29. Accepting the nature of a suspended sentence as his Honour has described it and that its nature must be borne in mind in considering the issues in this case, what is to happen on breach of suspended sentence is controlled by ss31(5) and (5A). The latter subsection requires the judge to "exercise the power" in s31(5) (a) – that is, to do two things, namely, "restore the sentence" and "order the offender to serve it".

30. I can well understand the attraction to a sentencing judge of construing s31(5)(a) as leaving the sentencing judge with some flexibility in determining how the sentence of imprisonment is to be served once that sentence has been restored. Circumstances will have changed and the judge may find himself or herself in apparent conflict with the policies expressed in the guidelines of the Act if compelled to order immediate imprisonment. The fact that s31(5) (a) requires a judge to make an order that the offender serve the sentence after it has been restored, encourages the construction used by the learned sentencing judge in this case. But the judge is restoring the sentence, not imposing it. The question that then has to be considered, I suggest, is whether the Act gives the sentencing judge the power to make an intensive correction order when ordering an offender to serve a sentence of imprisonment previously imposed and suspended but now restored. The power to make such an order is defined in s19 and in particular, s19(1). It provides:

> "19. Intensive correction order
> (1) If a person is convicted by a court of an offence and the court—
> (a) is considering sentencing him or her to a term of imprisonment; and
>
> (b) has received a pre-sentence report—
> the court, if satisfied that it is desirable to do so in the circumstances, may impose a sentence of imprisonment of not more than one year and order that it be served by way of intensive correction in the community."

31. In terms, s19(1) operates at the time of the initial consideration and the initial imposition of the sentence. As a result, the power to order that a sentence of imprisonment may be served by way of intensive correction order is in terms confined to the situation where the sentencing judge is considering sentencing a person to a term of imprisonment and imposes the sentence. Section 19(1) does not, therefore, authorise a sentencing judge to order a restored sentence of imprisonment to be served by intensive correction order.

32. In my view, this situation is unsatisfactory. I appreciate that the restrictions introduced by s31(5A) were imposed in 1997 because it was thought that, too often, courts were not sending people to prison on breach of suspended sentences of imprisonment. The intensive correction order, however, involves the imposition of a term of imprisonment and is treated by the Act as a sentence of imprisonment.[29] Thus it would not, in my view, be inconsistent with the policy behind the restriction imposed by s31(5A) to allow an intensive correction order to be used as an option by the judge ordering the offender to serve the restored suspended sentence. The same considerations apply to the combined custody and treatment orders[30]. There is also much to be said for the sentencing judge having those options available even though no exceptional circumstances are shown. It is in the community interest that sentencing judges be able to determine the most appropriate disposition of a particular offender to meet the circumstances existing at the time of that disposition. Much can change in 12 months and, while a suspended sentence must only be imposed where a term of imprisonment is appropriate,[31] there is an inherent tension in the concept of a suspended sentence and there is considerable scope for proper variation in judicial decisions as to their imposition. I suggest that the availability of intensive correction orders and combined custody and treatment orders to judges dealing with breach of suspended sentences is something government policy-makers should examine.

33. As to the future disposition of the matter, I agree with Callaway JA's observations as to

the approach open to the County Court in reconsidering the matter.

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[1] [2000] HCA 54; (2000) 202 CLR 321; (2000) 175 ALR 315; (2000) 74 ALJR 1538; (2000) 115 A Crim R 558.
[2] The second respondent is the County Court, which will submit to such order as this Court may make.
[3] Sub-section (6) was repealed by the *Sentencing and Other Acts (Amendment) Act* 1997.
[4] See *R v Hatch* [1998] 3 VR 693 at 699 line 50 - 700 line 8; (1997) 95 A Crim R 46.
[5] [1995] HCA 44; (1995) 184 CLR 453 at 463 and 479; (1995) 133 ALR 130; (1995) 70 ALJR 155; 32 ATR 405.
[6] It is unnecessary to decide whether "a term of imprisonment", without qualification or further explanation, always has that meaning: cf. s6B(2).
[7] Section 7(1)(ab).
[8] Section 7(1)(b).
[9] Sections 7(1)(ab) and (b), 18Q(1), (4) and (6) and 19(1), (3) and (5). See also s36(2)(a).
[10] For convenience I shall hereafter refer only to a judge.
[11] The expression "a last chance" or "one last chance" has often been used in connection with suspended sentences. See, for example, *R v Buckman* (1987) 47 SASR 303 at 304, *R. v. Groom* [1998] VSCA 146; [1999] 2 VR 159 at [37]; (1998) 104 A Crim R 375; and the Attorney-General's Second Reading Speech in relation to the *Sentencing and Other Acts (Amendment) Bill* (*Hansard*, 24th April 1997, at 874).
[12] Even prior to the 1997 amendments, the presumption was in favour of restoring the sentence: see *DPP v Newman* [1998] 1 VR 715 at 716-717; (1997) 94 A Crim R 450.
[13] The cases referred to in Fox and Freiberg, *Sentencing* (2nd ed. 1999) at 690 fn. 374 were decided without any requirement of exceptional circumstances. See also the *Victorian Sentencing Manual* (2nd ed. 1999) at 1024-1025, qualified by the Note at 1022, and *R v Stevens* [1999] VSCA 173 at [10].
[14] Section 19(1).
[15] Section 27(2)(a).
[16] Formerly sub-s(7), now sub-s(5A).
[17] I reject, later in these reasons, the contention that the mode of service may be left open when a suspended sentence of imprisonment is imposed.
[18] [1998] 3 VR 693 at 699-700 and 703 lines 6-9; (1997) 95 A Crim R 46.
[19] Accordingly, the statute speaks of the sentence already imposed as "held in suspense": see ss29 and 31(5)(a) and (b) and (6).
[20] Sections 18Q(1)(c) and 19(1)(b). See also s18Q(2).
[21] Section 96(2)(a) and (b). See also s97.
[22] That includes s7(1)(k), which refers to any other sentence or order that is authorized by any Act.
[23] Sections 18T, 22, 43, 49 and 109.
[24] See, for example, s32(1). "Detention" is defined in s3(1), but see also s7(1)(aab) and the other provisions of the Act relating to hospital security orders.
[25] They stand in contrast with ss18Q(6) and 27(8).
[26] The point not having been argued, I express no opinion as to whether that order would otherwise operate to restore the unqualified sentence of imprisonment that was held in suspense: cf *R v Arkle* (1972) 56 Cr App R 722.
[27] Compare s19(9).
[28] [1999] VSCA 67; (1999) 106 A Crim R 321 at [42]-[43].
[29] (s19(5)).
[30] (s18Q(1) and (6)).
[31] (s27(3)).

APPEARANCES: For the appellant The Queen: Mr D Just, counsel. PC Wood, Solicitor for Public Prosecutions. For the first respondent Bice: Mr JWK Burnside QC and Ms N Gobbo, counsel. Victoria Legal Aid, solicitors.
