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## SUPREME COURT OF VICTORIA — FULL COURT

***R v KISH***

Winneke CJ, Little and Starke JJ

4 March 1970 — [1970] VicRp 60; [1970] VR 459

**SENTENCING – DEFENDANT FOUND GUILTY OF ASSAULTING A POLICE OFFICER – POLICE OFFICER REQUIRED TO UNDERGO AN OPERATION AND TREATMENT – TRIAL JUDGE IN ADDITION TO SENTENCING THE DEFENDANT TO TERMS OF IMPRISONMENT MADE AN ORDER FOR COMPENSATION IN THE SUM OF \$500 IN FAVOUR OF THE POLICE OFFICER – WHETHER JUDGE IN ERROR: *CRIMES ACT 1958*, s546,**

**HELD:** Appeal heard and order of compensation quashed.

1. The words in s546 of the *Crimes Act 1958* "not exceeding the value of the property lost stolen injured or destroyed", which qualify the word "amount", indicate plainly enough that this section is applicable only to awards of compensation in respect of loss, damage or injury to property. The operation of the section is that the amount of compensation or satisfaction which the section authorizes is not to exceed the value of the property lost, stolen, injured or destroyed.

2. Those words of qualification or limitation on the amount of the award that may be made, being confined to the value of the property lost, stolen, injured or destroyed, indicate quite plainly that the section is concerned only with satisfaction or compensation in respect of loss or damage to property. It does not give power to make an award in respect of personal injuries received as the result of the commission of an offence.

3. Accordingly, the judge had no power to make the order for compensation. The application was granted, the appeal was heard *instantly* and allowed, and the sentence made by the judge varied by quashing the order that the applicant pay by way of compensation other than for medical and out-of-pocket expenses the sum of \$500 to the Police Officer.

**WINNEKE CJ:** (delivered the judgment of the Court (Winneke CJ, Little and Starke JJ.): The applicant, Alexander Kish, was presented in the County Court at Melbourne on 5 February 1970 on one count of larceny and two counts of assaulting a police officer in the due execution of his duty.

The applicant pleaded not guilty, was tried, and the jury returned a verdict of guilty on count one, the count of larceny, and on count two, the first count of assaulting a member of the police force, but not guilty on the third count, which was the second count of assaulting a police officer in the execution of his duty. The applicant admitted 14 prior convictions between February 1963 and August 1969. The learned judge sentenced him to four months' imprisonment on the count of larceny, and 12 months' imprisonment on the count of assault, making a total sentence of 16 months, in respect of which he fixed a minimum term of eight months. The learned judge also made an order, purporting to act pursuant to s546 of the *Crimes Act 1958*, that the applicant pay by way of compensation other than for medical and out-of-pocket expenses the sum of \$500 to Senior Constable Alfred Gordon Oldfield. The applicant has applied for leave to appeal against sentence.

The incidents occurred on the morning of 13 November 1969, when the applicant and a companion were seen walking in the street near a brewery in Abbotsford, each carrying a carton of beer. The applicant had previously been employed by the brewery and had recently been dismissed. The police were summoned, including Senior Constable Oldfield. The evidence was that when approached by the police the applicant assaulted Oldfield and that injuries were inflicted to Oldfield's face, which subsequently necessitated an operation and from which he was still suffering effects at the time of the trial, which was three months after the incident. The applicant and his companion were subdued and taken to a police station, and it was whilst being interrogated there that the assault, the subject of the third count, was said to have occurred. However, in respect of that the jury acquitted the applicant.

The applicant is a Hungarian, 34 years of age. We have heard him in support of his application, and he has submitted to the Court a written statement, the contents of which we have taken into account. It appears from what the applicant said to the Court that his real complaint is against the order for payment of \$500 to Senior Constable Oldfield. Apart from that order, we see nothing in the circumstances of this case which would justify this Court in interfering with the sentences which the learned judge in the exercise of his discretion imposed.

As to the order for payment of compensation, however, as we have said, the learned judge purported to make that order under s546 of the *Crimes Act* 1958. That section provides so far as relevant:

"Where any court has convicted a person of any felony misdemeanour or summary offence the court may if it thinks fit on the application of any person aggrieved immediately after the conviction award by way of satisfaction or compensation for the loss or damage suffered by the applicant any amount not exceeding the value of the property lost, stolen, injured or destroyed through or by means of the said felony, misdemeanour or summary offence".

After the conviction of the applicant the learned judge asked Senior Constable Oldfield whether he desired to make an application for compensation under that section, and, upon the constable saying that he did, the learned judge made the order.

The learned judge appears to have been in some doubt as to whether the terms of the section authorized an award of compensation for personal injuries, but according to the transcript he took the view that the face of the police officer constituted property within the meaning of the section.

We are unable to agree with the interpretation put upon the section by the learned judge. In our opinion, the words "not exceeding the value of the property lost stolen injured or destroyed", which qualify the word "amount", indicate plainly enough that this section is applicable only to awards of compensation in respect of loss, damage or injury to property. The operation of the section is that the amount of compensation or satisfaction which the section authorizes is not to exceed the value of the property lost, stolen, injured or destroyed. In our opinion, those words of qualification or limitation on the amount of the award that may be made, being confined to the value of the property lost, stolen, injured or destroyed, indicate quite plainly that the section is concerned only with satisfaction or compensation in respect of loss or damage to property. It does not, in our opinion, give power to make an award in respect of personal injuries received as the result of the commission of an offence.

For these reasons, we are of opinion that the learned judge had no power to make the order for compensation. The application will, therefore, be granted, the appeal will be heard *instanter* and allowed, and the sentence made by the learned judge will be varied by quashing the order that the applicant pay by way of compensation other than for medical and out-of-pocket expenses the sum of \$500 to Senior Constable Alfred Gordon Oldfield.

Solicitor for the Crown: Thomas F Mornane, Crown Solicitor.

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