19/00; [2000] VSC 11

SUPREME COURT OF VICTORIA

FARRUGIA v THE COUNTY COURT of VICTORIA & ANOR

Beach J

14 December 1999; 19 January 2000

PRACTICE AND PROCEDURE – ON APPEAL TO COUNTY COURT – FINDING OF GUILT MADE AND SENTENCE OF IMPRISONMENT IMPOSED BY APPEAL JUDGE – NO REASONS GIVEN – DUTY OF JUDGE TO STATE REASONS – WHETHER ERROR OF LAW.

F. appealed to the County Court against convictions and sentences imposed in the Magistrates' Court. At the conclusion of the appeal hearing, the judge said words to the following effect:
"On the first charge, I reject Mr Mason's submissions and I find the charge proven. The second charge is dismissed."

After hearing a plea by F's counsel in relation to penalty, the judge imposed a sentence of imprisonment wholly suspended for six months. Upon an originating motion to quash—

HELD: Appeal allowed. Order of the County Court quashed. Remitted for further hearing before another judge.
Orders of the nature made by the judge are of the gravest moment to an individual and involve lifelong consequences. They are, in substance, final orders. There were no exceptional circumstances in the case relieving the judge of his duty to state reasons why he was satisfied beyond reasonable doubt that F. was guilty of the offence in question and why it was that he considered it appropriate to sentence F. to a period of imprisonment.
***R v Arnold* [1998] VSCA 34; [1999] 1 VR 179; (1998) 102 A Crim R 535; and**
***Sun Alliance Insurance Ltd v Massoud* [1989] VicRp 2; (1989) VR 8, applied.**

BEACH J:

1. I have before an originating motion whereby the plaintiff Mario John Farrugia seeks the following relief.

> An order in the nature of *certiorari*:
> (a) bringing up the ruling made by the first-named defendant on 8 December 1998 at the appeal of the plaintiff in the County Court on the charge of not being at his place of abode had with him articles namely for use in the course of a theft contrary to s91(1) of the *Crimes Act* 1981 by which ruling the first-named defendant convicted the plaintiff;
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> (b) quashing that conviction; and
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> (c) remitting the matter to the County Court to be further dealt with according to law.

2. The first defendant to the proceeding is a judge of the County Court of Victoria. The second defendant is Constable Dustin Sheppard.

3. The following are the grounds stated in the originating motion and upon which the plaintiff originally sought relief:

> 1. The first-named defendant erred in law in that he failed to take into account relevant considerations;
> (a) The articles the subject of the charge may well have been the property of another person in the vicinity,
> (b) The articles may have been used in a previous theft or cheat and as such were unrelated to the instant charge,
> (c) The presence in the immediate vicinity of the plaintiff of another unidentified person apparently fleeing the area of the alleyway.
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> 2. The first-named defendant erred in failing to give reasons for his decision.
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> 3. The first-named defendant took into account irrelevant considerations.

4. The first-named defendant made findings which in the circumstances were unreasonable.

5. The plaintiff was denied natural justice.

4. The background to the proceeding may be summarised as follows:

5. On 24 February 1997 the plaintiff was apprehended by Constable Sheppard in Greensborough and after being questioned was charged with one count of going equipped to steal contrary to s91(1) of the *Crimes Act* 1958 and one count of being unlawfully on premises contrary to s7(1)(i) of the *Vagrancy Act* 1966.

6. The charges came on for hearing before the Heidelberg Magistrates' Court on 16 July 1998. The plaintiff, who was unrepresented, pleaded not guilty to each charge.

7. At the conclusion of the hearing the plaintiff was convicted of both offences and in respect of each offence was sentenced to a term of two months' imprisonment. However, the sentences were made concurrent and were suspended for a period of six months pursuant to the provisions of s27 of the *Sentencing Act* 1991.

8. On that same day the plaintiff filed a notice of appeal against the orders with the Registrar of the Magistrates' Court.

9. The appeal came before the County Court on 8 December 1998. The plaintiff was represented by counsel as was the second defendant.

10. At the commencement of the hearing that day counsel for the plaintiff submitted that the record of interview conducted by Constable Sheppard with the plaintiff on 24 February 1997 should be excluded either on the basis that it was irrelevant as there was nothing probative in it of relevance to the charges, alternatively on the basis that its probative value was far outweighed by its prejudicial effect.

11. His Honour rejected the submissions and permitted the record to be admitted into evidence.

12. Two witnesses were then called on behalf of the prosecution, Constable Sheppard and another police officer named Helman. Helman had been present with Constable Sheppard at the time the plaintiff was apprehended.

13. At the conclusion of the evidence for the prosecution counsel for the plaintiff submitted to His Honour that there was no case to answer in respect of each charge.

14. His Honour rejected the submission.

15. The plaintiff then elected not to give evidence or to call evidence. His counsel then submitted to His Honour that His Honour could not be satisfied beyond reasonable doubt that either charge had been established.

16. At the conclusion of submissions by both counsel in relation to the matter His Honour said words to the following effect:

> "On the first charge, I reject Mr Mason's submission and I find the charge proven. The second charge is dismissed."

17. His Honour then heard a plea by the plaintiff's counsel in relation to penalty and at the conclusion of the plea sentenced the plaintiff to two months' imprisonment in respect of the count of going equipped to steal but wholly suspended the penalty for a period of six months.

18. When the matter came before me the only ground relied upon by counsel for the plaintiff in support of his contention that the conviction should be quashed was that in convicting and sentencing the plaintiff His Honour failed to give any reasons for his decision.

19. In support of that contention counsel for the plaintiff relied, *inter alia*, upon the recent

decision of the Court of Appeal in *R v Arnold* [1998] VSCA 34; [1999] 1 VR 179; (1998) 102 A Crim R 535.

20. That was a case in which a judge of the County Court confirmed a sentence of 12 months' imprisonment which had been imposed upon an appellant by the Magistrates' Court but did not fix a non-parole period. As in the present case the judge gave no reason for his decision.

21. At VR p182 Phillips JA, with whose judgment the other members of the court concurred, said:

> "Granted that the duty to give reasons is never one to be expressed in absolute terms, none the less I find it difficult to conceive of a case in which a County Court judge, after hearing evidence on an appeal from the Magistrates' Court, would not be required to give reasons, although perhaps there is a danger in being too dogmatic. To quote McHugh JA in *Soulemezis* (1987) 10 NSWLR 247 at 279:
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> > 'But when the decision constitutes what is in fact or in substance a final order, the case must be exceptional for a judge not to have a duty to state reasons.' In *ex parte Powter; Re Powter* (1945) 46 SR (NSW) 1 at 4; 63 WN (NSW) 34, Jordan CJ said: 'There is another matter which cannot be allowed to pass without notice. As already mentioned, the magistrate has neglected to give any reasons for his order. This was wrong. It has been pointed out time and again that orders by magistrates made under legislation such as this "are of the gravest moment, and involve life long consequences. They are not like the ordinary kind of orders in other petty cases that come before them every day ... Magistrates should realise, even more than they seem to do, that this class of business is not mere ordinary trivia work, and they should deal with these cases with a due sense of the responsibility which administration of the *Summary Jurisdiction Act* and the far reaching consequences of the orders that they make thereunder entail": *Barker v Barker* (1906) 95 LT 549.'
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> > Jordan CJ was speaking here of the duty of magistrates when making maintenance orders; what his Honour said can only apply *a fortiori* to a County Court judge hearing an appeal in a criminal matter. It is regrettable that this court should have to say so.
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> In this case, I have no doubt but that reasons were required for the determination that was announced by the County Court judge so briefly at the conclusion of the hearing. Indeed, it may be that the failure of the judge to do anything but pronounce orders might have attracted other remedies in the circumstance that no appeal lay otherwise, but that is not a matter which falls for a determination, and I pass it by."

22. I cannot but concur with His Honour's observations.

23. Despite the argument of counsel for the second defendant to the contrary I consider that it was incumbent upon His Honour to state why he was satisfied beyond reasonable doubt that the plaintiff was guilty of the offence in question, and why it was that he considered that it was appropriate that he be sentenced to a period of two months' imprisonment.

24. As Jordan CJ pointed out in *Powter* – orders of this nature are of the gravest moment to an individual and involve lifetime consequences. They are, in substance, final orders. There were no exceptional circumstances in the case relieving the judge of his duty to state reasons. In the circumstances that is something which could have been attended to in a matter of minutes.

25. When a judge fails to give any reasons for his decision in circumstances where there was judicial duty to do so, as I consider was the situation in the present case, it can properly be said that he has made an error of law in the matter such as to necessitate an order for a new trial. See *Sun Alliance Insurance Ltd v Massoud* [1989] VicRp 2; (1989) VR 8.

26. The order of the County Court made on 8 December 1998 is brought up into this court and is quashed.

27. The appeal is remitted to the County Court for rehearing before another judge of that court.

APPEARANCES: For the plaintiff Farrugia: Mr S Gillespie-Jones, counsel. Aloe Ferraro & Co, solicitors. For the second defendant Sheppard: Ms C Quin, counsel. Solicitor for Public Prosecutions.