31/02; [2002] VSCA 171

SUPREME COURT OF VICTORIA — COURT OF APPEAL

DEPARTMENT of HUMAN SERVICES v MAGISTRATES' COURT and KASS

JD Phillips and Batt JJ A and O'Bryan AJ A

23, 30 October 2002 — (2002) 6 VR 140; (2002) 134 A Crim R 583

PRACTICE AND PROCEDURE – YOUNG OFFENDER CHARGED WITH INDICTABLE OFFENCES – ELIGIBLE FOR DETENTION IN A YOUTH TRAINING CENTRE – CHARGES ADJOURNED TO LATER DATE – ACCUSED REFUSED BAIL – REMAND WARRANT SIGNED BY MAGISTRATE WITH DIRECTION THAT ACCUSED BE HELD IN YTC – ACCUSED NOT UNDERGOING A SENTENCE OF DETENTION IN A YOUTH TRAINING CENTRE – WHETHER S12(1) OF THE *BAIL ACT* 1977 AUTHORISES BY ITSELF THE ISSUE OF A WARRANT OF REMAND OR WARRANT OF COMMITMENT – WHETHER COURT HAD POWER TO DIRECT DETENTION IN A YOUTH TRAINING CENTRE: *BAIL ACT* 1977 SS3, 12(1); *MAGISTRATES' COURT ACT* 1989, S49(1)(c).

Section 12 of the *Bail Act* 1977 ('Act') does not itself authorise the issue of any warrant by a Magistrates' Court, but deals only with the granting or refusing of bail and the certification of the details of that grant or refusal accordingly. The power to issue warrants is authorised by the *Magistrates' Court Act* 1989. Accordingly, a magistrate was in error in issuing a warrant under s12(1) of the Act and directing that the accused be detained in a youth training centre.

JD PHILLIPS JA:

1. This is an appeal from judgment given in the Trial Division on 27 June 2002 in a proceeding commenced by originating motion filed on 12 April 2002. The secondnamed respondent, Mr Kass (to whom I shall refer as simply "the respondent" as the firstnamed respondent took no part in the proceeding), was arrested on 5 April 2002 in respect of offences committed some days earlier, on 31 March, and he was accordingly in custody at the Melbourne Remand Centre when he was brought before the Magistrates' Court on 5 April on seven charges, including attempted armed robbery and assault with intent to rob. The respondent, who was born on 18 October 1981, was still then under the age of 21 years and was thus a "young offender" and eligible as such for detention in a youth training centre, should an order be made to that effect under s32 of the *Sentencing Act* 1991. On 5 April, however, the magistrate simply adjourned the proceeding to 28 June 2002 and refused bail and, apparently having been informed that the respondent was already undergoing a sentence of detention in a youth training centre, directed under s49(1)(c) of the *Magistrates' Court Act* 1989 ("the *MCA*") that the respondent be returned to the custody of the Department of Human Services until the end of the sentence or the resumption of the hearing of the charges, whichever was the sooner, and he signed a remand warrant to that effect.

2. When the Department of Human Resources refused to accept the respondent, it emerged, apparently, that on 5 April the respondent had not been "undergoing a sentence of detention in a youth training centre". Whatever the reason behind that conclusion[1], it was common ground by 8 April that the conditions for an exercise of power under s49(1)(c) had not been in existence on 5 April, and so the matter went back before the magistrate who vacated his earlier order as having been invalidly made. According to the certified extract of the register, on 8 April the magistrate "remanded [the respondent] to Melbourne Magistrates' Court on 28/06/2002 10:00 am" and again refused bail. The extract concluded with the words: "Defendant to be held in YTC", a direction that the magistrate was persuaded to give, this time in reliance upon s12(1) of the *Bail Act* 1977. Again his Worship signed a remand warrant to which that direction was added and this appeal is over the validity of the addition.

3. Before us, Mr Nash contended that on 8 April the magistrate had in fact made no order for adjournment, that order having been made on 5 April and remaining unaffected by the vacating of the order for detention. Mr Holdenson submitted that in remanding the respondent to appear on 28 June, the magistrate was not only remanding him in custody but also, by implication,

adjourning the proceeding to 28 June. It is not altogether clear just what was vacated on 8 April and hence the doubt about the order of adjournment, but in the end I do not think it matters and I am content to proceed upon the footing advocated by Mr Nash – that is, that on 8 April the magistrate took it that the order for adjournment, made on 5 April, still stood and so did not go beyond refusing bail and remanding the respondent in custody, directing his detention in a youth training centre.

4. On 12 April 2002 the Department commenced a proceeding in the Trial Division, seeking an order in the nature of *certiorari* to quash the direction for detention in a youth training centre and seeking, too, a declaration that the Magistrates' Court had no power to give such a direction under s12(1) of the *Bail Act*. The proceeding was tried on 20 June and on 27 June, delivering written reasons for judgment, the trial judge refused the order for *certiorari*. He made two declarations however; the first that, upon refusing bail, the magistrate had no power under s12(1) to issue a warrant of remand directing that the respondent be held in a youth training centre during the adjournment, and the second that the magistrate did have power under s12(1), upon refusing bail, to issue a warrant of commitment "committing [the respondent] to prison constituted by a youth training centre". (It was in view of this last that his Honour refused relief in the nature of *certiorari*.) Neither side now disputes the correctness of the first of these declarations, but the appellant contends that the second bespeaks error and it appeals by leave granted on 23 August 2002.

5. Section 12(1) of the *Bail Act* reads thus:–

> "(1) Where a person is apprehended, whether by virtue of a warrant or otherwise, and brought before a court or bail justice and application is made by or on behalf of the informant to remand the person or to commit him to prison during an adjournment the court or bail justice before which he is first brought *shall either grant bail* for the appearance of the person on the day to which he is remanded or the case adjourned *or shall refuse bail* and *shall certify on the warrant of remand or the warrant of commitment (as the case may be)*[2]
> (a) where bail is granted—
> consent to the person being bailed, stating also the amount of any surety or sureties to be required, and any special conditions applicable to the release of that person;
> or
> (b) where bail is refused—
> a statement of such refusal and of the grounds for refusal."

Thus s12(1) refers expressly to a "warrant of remand" and a "warrant of commitment". As already indicated, it is now common ground that, if issuing a "warrant of remand", the Magistrates' Court had no power to direct detention in a youth training centre, but his Honour held it otherwise if the court issued a "warrant of commitment". In his Honour's opinion, the issue of both warrants was authorised by s12(1) itself and, as a warrant of commitment necessarily involved commitment to prison, and as "prison" as defined by the *Bail Act* included a youth training centre, it followed that, if a warrant of commitment was issued, a direction could be given for detention in a youth training centre. As Mr Holdenson submitted to us, a number of things point against that line of reasoning.

6. First, he submits, under the *MCA* the number and kind of warrants that may be issued by the Magistrates' Court is now limited by s57. According to sub-s(1) that court may issue a warrant to arrest, a remand warrant, a search warrant, a warrant to seize property, a warrant to imprison, a warrant to detain in a youth training centre and a penalty enforcement warrant. The circumstances in which each of these may be issued is later spelled out in the *MCA*, as also are the persons to whom the warrant may be directed and the authority thereby conferred. The warrants with which we are immediately concerned are the remand warrant and the warrant to imprison, and perhaps the warrant to detain in a youth training centre.

7. As for the first, the remand warrant, the circumstances in which that may be issued are described in s79. Under sub-s(1), the warrant may be issued if a defendant who has been charged with an offence has been arrested and is refused bail, or if granted bail, is unable to meet a bail condition (paragraph (a)); or if the court "orders a defendant to be remanded in custody during the adjournment of any criminal proceeding" (paragraph (c)). Either of these paragraphs might perhaps have been invoked on 8 April, but if so, as the judge determined, no direction could be

given to detain the respondent in a youth training centre because, under s81, directions could then have been given only for detention in a prison or a police gaol, terms which, under the *MCA*, do not include a youth training centre. It is true that by virtue of s81 a remand warrant may in certain circumstances include a direction for detention in a youth training centre, but then only if the court gives a direction under s49(1)(c) – and, as we have seen, it is now common ground that the conditions calling that provision into play were not present on 8 April (or indeed on 5 April although on the earlier occasion it was mistakenly thought that they were).

8. As for the warrant to imprison, under s68 of the *MCA*, a warrant to imprison may be issued if the court orders that a person be sentenced to a term of imprisonment or, indeed, if "authorised by any other Act". But if a warrant to imprison is issued, by virtue of s70 of the *MCA* the warrant authorises the taking of the person named to a prison or, in some circumstances, to a police gaol. No provision is made for detention in a youth training centre. Under the *MCA*, then, the issue of a warrant to imprison does not embrace the possibility of detention in a youth training centre.

9. The third type of warrant mentioned in s57 and deserving attention is the warrant to detain in a youth training centre. That is dealt with but briefly in the provisions that follow. At the conclusion of the subdivision dealing with the warrant to imprison, s72 appears, applying the provisions of that subdivision, with any necessary modifications, to a warrant to detain in a youth training centre. But according to s72, that is only (so far as presently relevant) if a person is directed under subdivision (4) of Division 2 of Part 3 of the *Sentencing Act* 1991 or under the *Children and Young Persons Act* 1989 to be detained in a youth training centre – and that supposes a sentencing order. That appears to be consistent with the notion underlying the warrant to imprison which, generally speaking, follows upon sentence being imposed. No sentence was imposed on the respondent on either 5 or 8 April.

10. It follows, submitted Mr Holdenson, that of the warrants authorised by s59 of the *MCA*, the only three that might be relevant did not serve to authorise the direction given by the magistrate on 8 April that the respondent be detained in a youth training centre. Mr Holdenson submitted that on 8 April the magistrate had been exercising the power in s128 of the *MCA* to adjourn a proceeding; for under s128(2), if the court adjourns the hearing of a criminal proceeding the court may either allow the defendant to go at large, or remand the defendant in custody, or grant or extend bail. The magistrate was simply, he said, remanding the defendant in custody: that was the effect of his order and, if that was all that was occurring, there could be no justification for adding the direction that he be detained in a youth training centre. Mr Nash, as I have indicated, denied that the magistrate was exercising power under s128, the proceeding having been adjourned on 5 April, not on 8 April. But that does not matter because what is at issue is the power of the magistrate to direct detention when issuing the warrant and, to justify the warrant, one is returned to those earlier provisions of the *MCA* canvassed above. At least, that is the position if the warrant falls to be justified under the *MCA*.

11. Mr Nash's argument was that the warrant was not to be justified under the *MCA*, but rather under s12 of the *Bail Act*. That section, he submitted, was an independent source of power for the issue of a warrant, and that was the argument accepted by the trial judge. On that basis, the question was not of the circumstances in which a warrant might be issued under the *MCA*, but of the terms that might be attached when a warrant was issued under s12 of the *Bail Act*, and he relied upon the different terminology employed in the latter.

12. Mr Nash submitted that under s12(1) of the *Bail Act*, in the circumstances predicated, the Magistrates' Court was entitled to issue a "warrant of remand" or a "warrant of commitment" and that either might be issued when bail was refused or, perhaps, when bail was granted and a bail condition could not be met immediately, with the result that the defendant was not forthwith released on bail. He accepted that both the warrant of remand and the warrant of commitment, as mentioned in s12(1), involved detention in custody, although he suggested that the word "remand", when appearing earlier in s12(1) was perhaps used in the somewhat different sense of remanding whether or not in custody, in contradistinction to what followed which expressly involved committing the defendant to prison during an adjournment. Be that as it may, it was not the circumstances calling s12(1) into play that were debated on this appeal, but the restraints, if any, attending upon the issue of the warrants – and, as I have said, Mr Nash accepted that when a warrant issued under s12(1) it was a warrant for detention.

13. Mr Nash also accepted that if a warrant of remand was issued by the Magistrates' Court under s12 of the *Bail Act*, that warrant could not be distinguished, sensibly, from the remand warrant expressly authorised by the *MCA* – and on that basis he did not challenge the declaration made below that detention in a youth training centre was not allowed, given that the circumstances for such detention, as spelled out in s49(1)(c) of the *MCA*, were not present on 8 April. His argument focussed instead on the "warrant of commitment", the warrant appearing not only in sub-s(1) but also in sub-s(2) of s12. The latter deals only with the case of a defendant who, being charged with an indictable offence, "is committed to prison to take his trial for the offence", and that is not presently relevant. I simply note in passing that the expression "committed to prison to take his trial for the offence" appears to echo the words of s59(7) of the *Magistrates (Summary Proceedings) Act* 1975, which expressly allowed that a justice, at the conclusion of a committal hearing, might "by warrant commit [the defendant] to prison for trial" or admit him to bail for trial[3]. Similarly, the words in s12(1) "commit him to prison during an adjournment" may perhaps echo s79(1)(b) of the 1975 Act, authorising the court, upon an adjournment in the exercise of its summary jurisdiction, to suffer the defendant to go at large, or to "commit him to prison or such other custody as it thinks fit", or to "discharge the defendant on bail"[4]. Of course this apparent correspondence in terminology can go only so far: it may explain the wording of s12, but it does not resolve the competition between the submissions put to us about the compass of the "warrant of commitment" mentioned in s12(1).

14. On any view, there are difficulties in the wording of s12(1). One source of difficulty lies in the words immediately preceding paragraphs (a) and (b), because although those two paragraphs deal, in the alternative, with when bail is granted and when bail is refused, they specify the details that shall then be endorsed, or certified, "on the warrant of remand or the warrant of commitment (as the case may be)". Is s12(1) thereby supposing that, even where bail is granted, a warrant for detention will be issued, albeit that it is immediately endorsed with the terms on which bail is granted, or will that only be so where one of the conditions cannot be complied with? Or does s12(1) proceed upon the assumption that a warrant of remand or a warrant of commitment has earlier been issued[5], s12(1) itself dealing only with what shall happen upon a relevant proceeding being adjourned? Some of the difficulties were raised in the course of argument before us, but they were not resolved, both parties submitting that in this case there was no need to pursue them. I mention them now only because they seem to me to emphasise what is otherwise apparent: that the wording of s.12 does not now fit readily with the wording of the *MCA*. The *MCA* is the later Act and therefore might if necessary be taken to have displaced the earlier Act, simply on general principles; but fortunately the *MCA* itself makes express provision for any conflict.

15. Schedule 8 of the *MCA*, which operates by virtue of s150, contains a number of provisions headed "Savings and Transitionals". By clause 5, if by any other statute "a procedure is prescribed for or in relation to any proceeding in the Court or for or in relation to any step or process in such a proceeding" and there is also prescribed by the *MCA* a procedure that is applicable, then the latter applies despite the provisions of the former. Further, by clause 7:–

> "A criminal proceeding in the Court must, despite anything in any [i.e. any other] Act or subordinate instrument, be commenced and conducted in accordance with this Act and not otherwise."

If on 8 April an order of adjournment was made of the criminal proceeding[6] involving the respondent, I should have thought it followed from clauses 5 and 7 of Schedule 8 that the procedure to be followed was that spelled out in s128 of the *MCA*, rather than s12 of the *Bail Act*, if the two were in conflict. But I pass that by because of Mr Nash's submission that on 8 April the magistrate did not adjourn the proceeding but built instead upon the order for adjournment earlier made on 5 April.

16. But Schedule 8 goes further and by clause 11 deals with the meanings now to be given, in any other Act, to a number of terms, including "warrant of commitment". According to clause 11, that term, in any other Act, is to be taken to refer to –

> "warrant to imprison, warrant to detain in a youth training centre or remand warrant, whichever is appropriate".

In s12(1) the term "warrant of commitment" must therefore be taken to mean "warrant to imprison"

or "warrant to detain in a youth training centre": it can scarcely be taken to mean remand warrant, which, in substance, already appears in s12(1) in the alternative to "warrant of commitment". Now, if "warrant of commitment" must be taken to mean "warrant to imprison" or "warrant to detain in a youth training centre", the latter terms, without doubt, have the meaning given them by the *MCA* and, as such, the warrant to imprison does not authorise detention in a youth training centre, as we have already seen, and the warrant to detain in a youth training centre is not one which can be issued in the absence of one or other of the sentencing orders mentioned in s72. Detention in a youth training centre can be justified only if "warrant of commitment" in the *Bail Act* means something other than "warrant to imprison" or "warrant to detain in a youth training centre" within the meaning of the *MCA*, and in view of clause 11 of Schedule 8 that cannot be so. (I note in passing that, so far as I am aware, the trial judge was not referred to clause 11.)

17. It seems to me that, whatever the position under earlier legislation, s12(1) of the *Bail Act* cannot now be taken to authorise the issue by the Magistrates' Court of a warrant of remand or a warrant of commitment if, by those terms, is meant something other than a warrant expressly authorised by the *MCA*. Indeed, it seems to me that Mr Holdenson's submission should be accepted, that s12(1) does not itself authorise the issue of any warrant by a Magistrates' Court, but rather deals only with the granting or refusing of bail and the certification of the details of that grant or refusal accordingly. On one view, s12 of the *Bail Act* was enacted in 1977 to ensure that the court[7] before whom the defendant was brought considered the question of bail during adjournment, whether or not application was made in that behalf, and in my opinion that is how s12(1) should be approached, especially in the light of the detailed provisions now made by the *MCA* for the issue of warrants by the Magistrates' Court. Section 12 may regulate the grant or refusal of bail: it does not, in short, regulate the grant or issue of the warrant.[8] As Mr Nash said, that is the short point of this case and I agree. In my opinion, with respect, the trial judge erred in concluding that s12 was an independent grant of authority to issue a warrant.

18. It would follow in the ordinary case that the appeal should be allowed and the orders made below set aside, at least in part. As earlier recounted, his Honour did not grant *certiorari* to the magistrate but instead made declarations that there was no power in the Magistrates' Court when issuing a warrant of remand under s.12(1) to order detention in a youth training centre, but that there was such power (in effect) when it was issuing a "warrant of commitment". Subject to what follows, I would be disposed to set aside the second of these declarations as bespeaking error. In my opinion the Magistrates' Court had no power to issue a "warrant of commitment": there was power only to issue one or other of the warrants authorised by the *MCA* and, in the circumstances of this case, none of them justified an order for detention in a youth training centre. The definition of "prison" in s3 of the *Bail Act* had no relevance[9].

19. However, there are other considerations; for even before application was made for leave to appeal on 23 August, the respondent had been dealt with in relation to the offending on 31 March 2002. He was arraigned in the County Court on 2 August on one charge of attempted armed robbery and one charge of attempted kidnapping, and pleaded guilty, admitting prior convictions. For these offences he was sentenced on 8 August by his Honour Judge Nixon to a total effective sentence of 21 months' detention in a youth training centre and so at that point, if not earlier on 28 June 2002[10], the question of the validity of the direction given by the magistrate on 8 April became academic. The validity of his detention pursuant to the order of 8 April could no longer be anything other than moot, once the direction for his detention had expired. In the ordinary course, this Court sets its face against determining a point which is moot and, however important the matter may be otherwise, this Court requires that there be some lis between parties before it will embark upon a determination.

20. In this instance we were pressed, however, with the public interest as considered in *R v Board of Visitors of Dartmouth Prison, ex parte Smith*[11] and *R v Home Secretary, ex parte Salem*[12]. Accepting that the question, as it involved the respondent, was by now moot, Mr Holdenson submitted that it was important none the less for this Court to pass upon the power of the Magistrates' Court under s12(1) in view particularly of the limited facilities available by way of youth training centre and the need, ordinarily, for an assessment before any alleged offender was to be detained therein. Already, he said, some 29 offenders had found their way into youth training centres in consequence of an exercise by a magistrate of the supposed power so to order under s12(1) of the *Bail Act* and alleged offenders, with significant criminal history, should not be

housed, he suggested, with those who as young offenders had been sent to a youth training centre upon being sentenced. On the other hand, Mr Nash pointed out that of those 29, it appeared that 20 had ultimately been ordered to serve their sentences by way of detention in a youth training centre, so that, to that extent, no harm was done. Moreover, he submitted, the alternative was to require all alleged offenders to be detained, during adjournment, in an adult prison (or perhaps a police gaol), a result which might be even more unfortunate for the young offender than the result posited by Mr Holdenson. Mr Nash formally objected to the use of the affidavits putting such matters before the court: he submitted that they were not relevant and it was under cover of that objection that he made his submissions.

21. In the end, I think that, because the problem raised by this appeal is by now moot so far as the respondent is concerned, we should not do other than dismiss the appeal. However, it is appropriate none the less, I think, for us to express our opinion about the meaning and operation of s12(1) of the *Bail Act*, at least as it bears upon the issues otherwise raised by the appeal, because of the difficulties which I am persuaded the appellant faces if we were to require that another case be brought before the court in which the issue was not moot. That is because, generally speaking, there is an eight day limit imposed by the *MCA* on the adjournment of such proceedings, unless there is consent; and given that limit, it would obviously be very difficult for the Department, the present appellant, to find another case which was suitable for adjudication and to bring it not only before the Trial Division, but up to this Court before the adjournment expired. While access to the Trial Division can be gained quickly and no doubt any judge in the Trial Division would be disposed to follow and apply the reasoning of the trial judge in this instance, there is the antecedent problem of the appellant's learning that a suitable vehicle has been found. The Department is not itself party to the proceeding coming before the Magistrates' Court under s12 of the *Bail Act*: it must learn of a suitable case only after the event. Accordingly, it seems to me that if we do not express our opinion on s12 in this case, it may be a long time before a suitable vehicle does reach this Court in which the problem has not already become moot. Moreover, I am prepared to express an opinion in the course of arriving at a conclusion to dismiss the appeal, because I am clear that s12 does not authorise, in itself and independently of the *MCA*, the issue by the Magistrates' Court of a "warrant of remand" or a "warrant of commitment".[13]

Conclusion

22. This appeal does not call into question the first of the two declarations made by the trial judge on 27 June 2002. The appeal calls into question only the second of the two declarations which were made (and made notwithstanding that the magistrate purported to issue only a remand warrant, not a warrant of commitment[14]). In my opinion, s12(1) of the *Bail Act* did not authorise the issue by the Magistrates' Court of a "warrant of commitment" as suggested by the declaration and that court could not thereby obtain the power to direct detention in a youth training centre by reason of the definition of "prison" in the *Bail Act*. Ordinarily, that would mean that this appeal should be allowed and the second declaration set aside but because, since 28 June or at the latest when sentence was passed on the respondent on 8 August, the question has been moot so far as concerns the respondent, I think that we should make no order other than an order dismissing the appeal. For the sake of giving guidance, I add that, if the other members of the court agree with the foregoing, the Magistrates' Court should no longer follow or apply the reasoning of the trial judge in the judgment handed down on 27 June last.[15]

BATT JA:

23. I am in entire agreement with the reasons for judgment of Phillips JA.

O'BRYAN AJA:

24. I have read in draft the reasons for judgment of Phillips JA. I agree with his reasons about the meaning and operation of s12(1) of the *Bail Act* 1977 and his conclusion that the second declaration could not be made. I further agree that the appeal must be dismissed since there was no longer a dispute between the parties, at latest, after the respondent (Kass) was sentenced on 8 August 2002.

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[1] The reason was not explored before us. It appears from the subsequent sentencing remarks of his Honour Judge Nixon that on 31 December 2001 the respondent was sentenced to 6 months' detention in a youth training centre and that on 4 March 2002 he was released on parole. He was therefore on parole on 31 March when he committed these offences, but whether that justified the conclusion that he was not at the

time "undergoing a sentence of detention in a youth training centre" (albeit that he was on parole for the time being) is a question which was not argued and on which I offer no opinion. See and compare *Children and Young Persons Act* s232(2) and *Corrections Act* 1986 s76 which provide expressly that while on parole the offender is still "under sentence".
[2] My emphasis.
[3] See also and compare s57(1)(b) of the 1975 Act.
[4] See also and compare s78(3)(b) of the 1975 Act.
[5] Compare the warrant of apprehension mentioned in s19(1)(d) of the 1975 Act.
[6] The word "proceeding" is defined in s3(1) of the *MCA* to include a committal proceeding.
[7] The reference in s12(1) to a bail justice was added by amendment by Act No. 84 of 1997.
[8] Indeed Mr Holdenson's submission was that s12 of the *Bail Act* never itself authorised the issue of a warrant: that authority reposed elsewhere, such as in ss19(1)(d), 21, 57(1)(b), 59(7), 78(3)(b) and 79(1)(b) of the *Magistrates (Summary Proceedings) Act* 1975. But it is unnecessary to explore that submission further in view of the detailed provisions made now by the *Magistrates' Court Act* 1989.
[9] The definition of "prison" in the *Bail Act* included a youth training centre for quite different reasons: see for example ss129(5), 160(5)(c), 184(12)(c) and s194(1) and (2) of the *Children and Young Persons Act* 1989.
[10] It appears from his Honour's sentencing remarks that on 1 July 2002 the respondent was sentenced to 12 months detention in a youth training centre, and if this sentence was imposed in the Magistrates' Court for summary offences, it may be that those were some of the matters arising out of events on 31 March 2002. But that would seem to have no present significance, save perhaps as to the precise date on which the magistrate's order of 8 April ceased to have any further effect.
[11] [1987] QB 106 at 115; [1986] 2 All ER 651; [1986] 3 WLR 61.
[12] [1999] UKHL 8; [1999] 1 AC 450 at 456-7; [1999] 2 All ER 42; [1999] 2 WLR 483.
[13] It should be noted that the proceeding became moot only after the trial judge announced his decision on 27 June 2002.
[14] Of course his Honour considered the warrant of commitment because if on 8 April the magistrate could have achieved his purpose with such a warrant that was reason for refusing *certiorari* in the exercise of discretion – which was what his Honour did.
[15] [2002] VSC 257.

APPEARANCES: For the Appellant Department of Human Services: Mr OP Holdenson QC and Mr BM Dennis, counsel. Victorian Government Solicitor. No appearance for the First Respondent (Magistrates' Court). For the Second Respondent Kass: Mr PG Nash, QC and Mr JW Lee, counsel. GR Campbell, solicitors.
