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SUPREME COURT OF SOUTH AUSTRALIA

GRAHAM v BARTLEY

Matheson J

11 October 1984 — [1984] 57 ALR 193

SENTENCING – OFFENCES AGAINST THE SOCIAL SECURITY LEGISLATION – \$4084.90 IMPROPERLY OBTAINED – MITIGATING CIRCUMSTANCES – WHETHER SENTENCE OF FOUR MONTHS' IMPRISONMENT TOO SEVERE.

An appeal was lodged against a Magistrate's sentence imposed in respect of numerous charges alleging non-declaration of income in a social security form. G. was an 18 year old unemployed person at the time when the offending commenced; she claimed unemployment benefits in her own name as well as in her sister's name. 25 counts were laid, and the overpayment figure was \$4084.90; no reparation order was sought. At the hearing before the Magistrate, G. pleaded guilty to the charges and in the plea on her behalf, it was revealed that G. was an unmarried mother with a child 10-11 months of age, that she was in receipt of a supporting mother's pension and that her reason for committing the offences was because of her financial circumstances at the time. The Magistrate sentenced G. to imprisonment for 4 months with a minimum of two months. On appeal against the severity of the sentence—

HELD: Appeal allowed. G. released upon a bond for one year after serving 14 days' imprisonment.

MATHESON J: "... [197] Section 20 of the *Crimes Act* (Cwth) (so far as is material) provides:—
"(1) Where a person is convicted of an offence against the law of the Commonwealth, the court before which he is convicted may, if it thinks fit— (a)

(b) sentence the person to a term of imprisonment but direct, by order, that the person be released, upon his giving security of the kind referred to in paragraph (a), either forthwith or after he has served a specified part of the term of imprisonment" (my emphasis).

I agree with the remarks of White J in *Scott v Cameron* [1980] 26 SASR 321 at 327; (1980) 48 FLR 274 where he pointed out that the "discretion under s20 is much wider than, and not confined to the special considerations mentioned in s19B", but I am not persuaded that the learned Special Magistrate failed here to appreciate the width of his discretion to release the appellant under s20 of the *Crimes Act*. However, as he has erred in his consideration of the appropriate penalty in the respects I have mentioned, I must consider the matter of the appropriate penalty afresh. In *Taormina v Cameron* [1980] 24 SASR 59 at 60; (1980) 29 ALR 151, King CJ said in relation to similar offences: "Frauds of this kind must be viewed seriously if only 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. I can well appreciate why the learned Special Magistrate felt that the offences called for a deterrent penalty".

I think there were mitigating factors here, the appellant's youth, the fact that she had no prior convictions, and the fact that this was one continuing course of conduct, not a series of distinct crimes, (cf *Steenson v Holmes* 75 LSJS, Bray CJ, 371 at 373), and the fact that she was in real financial need and was not motivated by greed. In my opinion the case is a proper one to invoke s20 of the *Crimes Act*, but I think that the offences were so blatant that the appellant should spend a period in prison. I allow the appeal, but only for the purpose of ordering pursuant to s20 of the *Crimes Act* that the appellant be released from custody after she has served 14 days of the term of four months upon her entering into a bond prior to her release in the sum of \$100 to be of good behaviour for one year, and during that time to be under the supervision of a probation officer and to comply with his reasonable directions.