

67/89

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v WALTERS**Crockett, O'Bryan and Gray JJ****22 September 1989****SENTENCING – WELFARE FRAUD – AMOUNT OF \$11,234 IMPROPERLY OBTAINED – DEFENDANT SENTENCED TO A TERM OF IMPRISONMENT.**

W. applied for leave to appeal against an effective sentence of 3 years' imprisonment with a minimum of 2 years 3 months imposed in respect of 8 counts of social service fraud and 1 count of attempting to defraud the Commonwealth. 6 counts alleged that W. obtained unemployment benefits under different assumed names, 2 counts alleged improper receipt of sickness benefits and 1 count alleged an attempt to claim unemployment benefits under a 7th assumed name. Upon appeal—

CROCKETT J: *[After setting out the nature of the offences, and grounds of the application not relevant to this report, Crockett J continued ...]* [3] It was then said that the Judge erred in that the sentence was based on an assumption by him as to the correctness of certain facts which assumption was in fact erroneous. The Judge in the course of stating his reasons for sentence set out a somewhat elaborate tabulation of what he perceived to be the unemployment benefits and the sickness benefits received by the applicant in the course of the commission of the eight offences of defrauding the Commonwealth.

It has been pointed out to this Court that in that tabulation the Judge has (*inter alia*) mistakenly assigned to the applicant receipt of unemployment benefits when, in fact, it was sickness benefits which were received. He has also misstated the date of the receipt of certain of the benefits and he has attributed to the applicant one more sickness benefit payment and one more unemployment benefit payment that was the fact. But each fortnightly payment did not constitute a separate offence. It was all [4] the payments (regardless of their number) received pursuant to the use of a false name that amounted to a single offence.

At first blush it would seem that by reason of the factual errors the Judge may have sentenced on an incorrect understanding of the nature and extent of the actual offences committed. However, it does appear that the Judge really approached the matter in an omnibus way, as he was entitled to do. It was this approach that led him to impose the single head sentence and minimum term. There was no question but that the Judge fully understood the nature of each of the eight completed counts of defrauding the Commonwealth and the one attempt to defraud the Commonwealth. He also understood that the total amount received by the applicant by reason of such fraud was the sum of \$11,234. The Judge approached the question of determining an appropriate term of imprisonment to be imposed by looking at the overall picture consisting of the Commonwealth's being defrauded and the amount that was received by the applicant by his pursuing those fraudulent actions. In those circumstances it is not possible, I think, to say that the Judge's discretion had, in fact miscarried by reason of the errors that he made and to which I have briefly referred.

Finally, it was said that in all the circumstances the sentence was manifestly excessive. In my view, having regard both to the circumstances of the offences and those of the offender, it is quite impossible to maintain that contention. The various matters that might be taken into [5] account by way of mitigation of the offences were drawn to the Court's attention. But it remains clear, in my view, that the Judge's sentencing discretion has in no way miscarried and, indeed, the sentence he selected as being appropriate appears to me a perfectly proper sentence in all of the circumstances. The applicant is now aged about twenty-eight years. After all, he had an appalling criminal record consisting of eight prior convictions from seventeen court appearances. His offences covered a broad range of activity from malicious injury to theft and deception, burglary, forgery, uttering, obtaining property by deception and handling stolen goods. Having regard to

that history, it is difficult, as I have indicated, to appreciate how the Judge really could have been more lenient than he was in all the circumstances. I therefore find that ground also has not been made out and I would dismiss the application.

O'BRYAN J: I agree.

GRAY J: I agree.

CROCKETT J: The application is dismissed.
