

26/07; [2007] VSC 139

SUPREME COURT OF VICTORIA

R v WILLIAMS

King J

27 April, 4 May 2007

PRACTICE AND PROCEDURE – APPLICATION TO FILM COURT SENTENCING PROCEEDINGS – COURT HAS DISCRETION WHETHER TO ALLOW SUCH FILMING – DUE TO LENGTH OF PROCEEDINGS PUBLIC WILL ONLY SEE SHORT EXTRACTS BEING DELIVERED BY THE JUDGE – WHETHER FILMING OF PROCEEDINGS WOULD DO ANYTHING TO ADVANCE THE INTERESTS OF JUSTICE – WHETHER FILMING PROCESS MAY HAVE POTENTIAL TO TURN SPOTLIGHT ON THE JUDGE RATHER THAN ON THE CRIMINALITY INVOLVED AND THE APPROPRIATENESS OF SENTENCE BEING PASSED – WHETHER SUCH A PROCESS WILL ENHANCE CONFIDENCE IN THE JUDICIAL PROCESS – APPLICATION REFUSED.

1. The Court has a wide power to regulate its proceedings and the reporting of those proceedings and there is no doubt that the Courts have consistently encouraged openness and transparency of proceedings. However, to permit filming of the sentencing process would be quite a significant change to the current practice of reporting and the Court should be hesitant to permit such a change in the manner of reporting isolated cases.

R v Avent, unrep, SC Teague J, 17 May 1995, not followed.

2. Where a sentence in relation to a person charged with multiple murders would take approx. 1 hour to pronounce, that only short extracts would be reported in the media, and the process may have the potential to turn the spotlight on to the judge rather than on the criminality involved and the appropriateness of the sentence being passed, the granting of an application to film the proceedings would do nothing to advance the interests of justice nor enhance confidence in the judicial process. Accordingly, the application was refused.

KING J:

1. This is an application to film the passing of sentence upon Carl Williams, who has pleaded guilty to three counts of murder and one count of conspiracy to murder. The applicants are various media organisations, including television channels 7, 9, 10, the ABC and *The Herald & Weekly Times* and *The Age on Line*.

2. The submission has been made on the basis that only one stationary film camera would be placed in the court and film only my sentencing remarks. It was proposed that similar orders as those made by Teague J in the (*R v Nathan John Avent*), unreported decision of 17 May 1995, be made.

3. The orders of Justice Teague read:

1. The sentence may be recorded by one camera operated by a camera operator determined by the court's information officer, such camera to be located in the public gallery and such camera to cover only the Bench and with the use of one microphone on the Bench.

2. The videotape will be subject to editing by me before being made available to the court's information officer for the media.

3. Material so recorded which is broadcast shall be presented in a way which gives an accurate, impartial and balanced coverage of the proceedings and the parties involved. Any such broadcast is to be without editorial comment and to be of at least two minutes duration per news item.

4. There shall be no use of such material otherwise than for normal news programs unless prior approval for that use has been given by me.

4. In submissions by Mr Quill on behalf of Channels 7, 9, the ABC and the Herald & Weekly Times, and adopted by Mr Gilbertson on behalf of Channel 10 and Ms Cooper on behalf of *The*

Age on Line, a number of reasons were put forward as to why such an order would be appropriate in the public interest.

5. In summary those reasons were:

1. That this is a matter of the highest public interest, described as the final chapter in what has been a spate of murders in Victoria which has been one of the greatest law and order issues in Victoria.
2. That not only is this the final chapter in legal proceedings, it is one of the most important and final chapters in the history of Victoria.
3. That the proper, detailed and thorough reporting of this case has the potential to dramatically increase or solidify the public's confidence, like no other case before, in the judicial system, which includes the prosecuting authorities and the investigative authorities.
4. That there is no better way to effectively bring the public into the courtroom and allow the public to understand this proceeding. In the words of Mr Quill, better than a news reader reading out of the words from a transcript.
5. That film of the judge reading out the sentence would have a greater impact on the public sitting in their living rooms than just hearing a news reader reading out various references to the sentencing judge's remarks.

Mr Quill submitted that it would have an impact in a number of ways, including sending a strong message to those that might think about or consider engaging in criminal activity, and also driving home the point to those in our society who don't engage in criminal behaviour that our judicial system is working.

6. The final submission was on the basis that if it was shown on television in this way it effectively would make it more real.

6. In respect of this matter it is clear that it is a discretionary matter. The court has a wide power to regulate its proceedings and the reporting of those proceedings.

7. There is in Victoria no statutory provision prohibiting the use in court of a camera. It is a matter for the judge in terms of regulating the proceedings.

8. The only decision to which I have been referred in which reporting in this manner has occurred is *R v Avent* to which I have earlier referred, where Teague J agreed to permit the filming of a sentence.

9. His Honour was of the view that the televising of proceedings could be seen as a form of extended reporting which was, in his opinion, consistent with the principle of open justice.

10. There is no doubt that the courts have consistently encouraged openness and transparency of proceedings occurring in a court and determined that there would need to be a high degree of necessity demonstrated before a court would make a suppression order in respect of evidence being heard in an open court.^[1]

11. In the decision of Teague J in *R v Avent*, his Honour stated, at p16:

There was argument before me as to the extent to which the filming of the sentence being handed down would inform the community better and in so doing help to demystify the process for people who had never set foot inside the courts. In that regard the point must be made at the start that the additional insights into the administration of criminal justice that are likely to come from film of the handing down of a sentence which focussed only on the judge could not be but small. That proposition must be seen linked to the proposition that the course applied for, or at least subject to conditions which were imposed, represented but a small variation upon what is now the established practice. The difference between the viewers seeing and hearing the words of the sentence pronounced by the judge rather than by a news reader is, in my opinion, remarkably small.

12. With respect to Teague J, I agree that the difference and the impact between a news reader and a judge is minimal. The sentence which will take anything up to an hour to pronounce will

certainly not be aired in full on news broadcasts which occupy approximately 20 minutes in relation to the commercial channels and 30 minutes in respect of the ABC. I acknowledge that channel 10 has a much longer news service.

13. Of that time half is usually devoted to sporting news, and as a result what the public will again see, or hear, are but short extracts from the reasons for sentence. I see no additional benefit or impact in these short extracts being delivered by the judge. Due to the length of the reasons, the remarks will be read and thus the person making the remarks would not, by necessity, even be looking at the camera.

14. Apart from the boredom factor, I do not consider it would in fact do anything to improve the delivery of those remarks.

15. I do not, however, agree with his Honour that the filming of the passing of the sentence represents a small variation upon the established practice. It is my view that it would be quite a significant change to the current practice of reporting.

16. The judge who passes sentence is not the important part of the process. It is the court that is passing sentence through the agency of the individual judge.

17. It would be tragic to see the cult of personalities start to attach to the office of judge of any court in this country.

18. Whilst the court has assisted by providing brief file footage of robed judges in court this was done in response to judges being filmed crossing the road or walking along the street and not to promote the judge as an individual.

19. The process that is being requested may have the potential to turn the spotlight on to the judge, rather than where it belongs, which is on the criminality involved and the appropriateness of the sentence being passed.

20. The sentence imposed by Teague J in the matter of *R v Avent* was the subject of an appeal which is an unreported judgment of 22 December 1995.

21. Mr Quill submitted that the Court of Appeal, comprising Phillips CJ, Callaway JA and McDonald AJA did not consider the grounds relating to the televising of the sentence, and accordingly the decision of the Court of Appeal can be of no assistance in the determination of the exercise of my discretion. I do not agree.

22. Callaway JA and McDonald AJA at p2 of their joint judgment stated that there were three principal contentions advanced by the applicant:

The first was that both the head sentence imposed on the count of murder and the parole period were manifestly excessive. The second was the judge had in fact, albeit unconsciously, been influenced by the attention directed to the case by the media. That was said to be demonstrated by among other things both the form of his Honour's sentencing remarks and the severity of the sentence. The third was that in all the circumstances a fair-minded lay observer, with knowledge of the material objective facts might have entertained a reasonable apprehension that his Honour might have been so influenced in the process of sentencing. If so, it was submitted that the sentencing process was vitiated and the applicant should be resentenced by this court.

Their Honours then continued and it was upon this part of the judgment that Mr Quill relied: At the outset we must emphasise that this appeal is not about whether a judge in exercising his or her discretion in the conduct of a trial or the passing of a sentence should permit proceedings to be televised. The appeal concerns the question whether his Honour's sentencing discretion miscarried in the circumstances of this case.

23. Whilst their Honours did not determine that matter, they did make what could be viewed as a comment, or a caution, on the overall fairness of allowing individual cases to be singled out for this special form of reporting when they stated at p9 of their judgment:

In the circumstances of the present case when regard is had to comparable sentences in recent years, we are forced to the conclusion that the sentence of imprisonment for life was manifestly excessive. Our conclusion in this matter, which was the applicant's first contention and which was also the first of the amended grounds of appeal, makes it unnecessary for us to consider the other two contentions or the other amended grounds. We observe only that again in the circumstances of this particular case the third contention was not without force.

24. It is my view that the court should be hesitant to permit such a change in the manner of reporting isolated cases.

25. Whilst I acknowledge that there has been intense media interest in this case, the type of media coverage causes some concern. Carl Williams is the person who is being sentenced, but in the past, and particularly in the last week, there have been quite sensational reports relating to his ex-wife, his parents, his friends, his lawyers past and present, what they are wearing, what they are saying and what they are doing. *The Age on Line* report on the first day of the plea hearing appeared to have been written by a fashion reporter.

26. Whilst all of this may make for interesting human interest stories, which I must presume the editors and programmers believe to be true, it does nothing to advance the interests of justice. The matters for which he is to be sentenced are serious. There are no more serious charges in the criminal calendar than charges of murder; they carry a penalty of life imprisonment.

27. In relation to the proposed conditions of reporting, it is my opinion that it would be impossible for me to determine in advance whether a broadcast containing any film material would comply with the condition that it be presented in a way which gives an accurate, impartial and balanced coverage of the proceedings and of the parties involved. That is a subjective test and every person's opinion of what would constitute impartial and balanced would vary.

28. It is an unrealistic condition and virtually incapable of compliance.

29. It is my view that the interests of justice will not be advanced in any way by the filming of me reading the sentence that will be imposed on Carl Williams.

30. I do not accept that such a process will enhance confidence in the judicial process and may in fact be seen to elevate these crimes to a level beyond which they belong.

31. Whilst I accept that they are very serious crimes and involve the death of a number of people, there are other persons who have equally been charged with heinous crimes in which as many or more people have died and in equally brutal circumstances, perhaps in not such a public manner but murdered nonetheless.

32. Anyone who is interested in the sentence and the reasons for sentence will be informed sufficiently by either the news services on television, the newspaper reports or the reading of the sentencing remarks which will be available on Austlii and on the Supreme Court website when revised. There will be nothing secret about the remarks. They will be delivered in an open court and the copies of the remarks made available to any interested party as soon as they are revised. Due to the media interest that revision will be done as soon as possible; I would presume on the morning.

33. Accordingly, for those reasons I refuse the application for filming of the sentence of Carl Williams.

^[1] See *Murphy v R*; *John Fairfax and Sons v The Police Tribunal of New South Wales*; *Herald & Weekly Times Pty Ltd and The Age Company v A*.

APPEARANCES: For the Crown: Mr G Horgan SC, counsel. Angela Cannon, Solicitor for Public Prosecutions. For the accused Williams: Mr D Ross QC with Ms S Cure, counsel. Lethbridges Solicitors.
