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## SUPREME COURT OF VICTORIA

***SMITH v DIR-GENERAL of COMMUNITY WELFARE SERVICES*****Crockett J****3 February 1982****CANCELLATION OF ATTENDANCE CENTRE ORDER – POWER OF COURT TO DEAL WITH OFFENDER – ISSUE OF WARRANT OF APPREHENSION: COMMUNITY WELFARE SERVICES ACT 1970, S145E.**

The defendant was sentenced to eight months' imprisonment on two charges of obscene exposure such sentence to be served at an Attendance Centre. His attendance being considered unsatisfactory, an application was made to the Magistrates' Court for cancellation of the order. The Magistrate considered that there had been breaches justifying cancellation and ordered that the unexpired portion of the sentence be served in prison. After discussion, he then ordered that a warrant of apprehension be issued for the offender.

**HELD: Upon cancellation of an Attendance Centre order, the issue of a warrant of apprehension is a prerequisite to the Court having power to deal with an offender.**

**CROCKETT J:** ... The Magistrate constituting the Stipendiary Magistrates' Court, found that there had been breaches which he considered should lead him to make the cancellation order sought. Having pronounced such an order he heard argument as to the course that he should follow within the limits provided by sub-section (3) of s145E of the Act and then concluded that he should order that the unexpired portion of the term of imprisonment to which the applicant had been sentenced should be served in prison.

... When he had pronounced such an order, his attention was drawn to the decision of the Full Court in the *R v Hebaiter* [1981] VicRp 39; (1981) VR 367.

... The Full Court indicated quite clearly that upon cancellation of an order for attendance at an attendance centre, a court was without power further to deal with an offender unless and until the court had issued, or caused to be issued, a warrant for the apprehension of the offender and the offender was brought before the court pursuant to that warrant, further to be dealt with.

The Magistrate, after being told something to this effect, ordered that a warrant for the apprehension of the offender be issued but he pronounced such an order after he had purported further to deal with the applicant consequent upon the cancellation of the attendance order. It is clear then that the course which both the Act itself in its literal terms requires to be followed and which the Full Court said was essential to be followed before an offender could be further dealt with had not in fact been followed.

The result is that the punitive order purportedly pronounced by the Magistrate was invalidly made. ...