

28/87

SUPREME COURT OF VICTORIA — FULL COURT

R v CIASTON

Young CJ, Crockett and Vincent JJ

6 August 1987 — (1987) 27 A Crim R 285

PRACTICE AND PROCEDURE – SENTENCING – PROGRESS REPORT SENT TO COURT WITHOUT REQUEST – WHETHER SUCH COMMUNICATION IMPROPER.

A court must adjudicate impartially upon the material presented to it in open court. There should be no communication by a third party with the Court otherwise than in open court when the matter is under consideration or at the request of the court.

YOUNG CJ: *[After dealing with the application for leave to appeal against sentence, His Honour made the following observations]:* ... [5] There are, however, some other observations which I wish to make. It appears that there was sent to the County Court from the Department of Corrections what is described as a progress report prepared for the consideration of the Melbourne County Court. This report was evidently transmitted without being asked for by either party to the proceedings or by the court. It was, of course, shown to both parties and, in the circumstances, no miscarriage of justice resulted from [6] what is, technically, an unauthorised communication with the Court.

The Court adjudicates between the Crown and the subject in criminal proceedings and it is, of course, fundamental that it must adjudicate impartially upon the material presented to it in open court. We cannot in any way condone a communication by either party secretly with the Court. Nor can it be left to the responsibility of the Court to ensure that any such communication is subsequently published.

It seems that something of a practice may have developed in this respect. If it has, it ought to cease forthwith. On reflection, it will, I am sure, be appreciated that it is a practice that cannot be permitted. Without rehearsing all the reasons, it could easily happen that if no report were volunteered, an adverse inference might be drawn against a prisoner where none was intended. It is better that reports are either obtained by a party or sought by the judge.

I have not the slightest doubt in this particular case that the report was intended to be helpful and, indeed, up to a point it was helpful, but helpful or otherwise the principle must be strictly adhered to that there is no communication by a third party with the court otherwise than in open court when the matter is under consideration or at the request of the Court.

The practice has been taken a step further in this case and, for the first time in my experience, not only was a report made to the County Court which was uninvited, but a communication was made with this Court which was equally uninvited. It is described as a progress report; it is [7] described as having been prepared for the consideration of the Melbourne Supreme Court and it puts forward some views about the applicant which are not entirely in accord with the views put forward in the earlier report from the Department of Corrections.

Again, I do not doubt the report was prepared and transmitted to this court with the best of motives and with the intention of assisting, but it cannot be too clearly understood that what can only be described as a secret communication with the Court concerning a matter pending before it is improper and cannot be allowed. Apart from other considerations this Court in the vast majority of cases acts upon the evidence given in the Court below and can only receive additional evidence in very few cases and then only according to very special rules. However, as I have already indicated, I concur in the order which Vincent J proposed.