39/84

SUPREME COURT OF VICTORIA — FULL COURT

R v BRIDGES

Young CJ, Murray and Southwell JJ

23 July 1984

PROCEDURE – ATTENDANCE CENTRE ORDER – COMMENCEMENT DATE: *PENALTIES AND SENTENCES ACT* 1981, SS36, 37, 40, 42; *COMMUNITY WELFARE SERVICES ACT* 1970, S122; *CRIMES ACT* 1958, S476.

Attendance at an attendance centre should be co-terminous as nearly as possible with the term of the sentence. Accordingly, in making an attendance order, a court should not specify a commencement date more than seven days after the making of the order.

YOUNG CJ, MURRAY J and SOUTHWELL J: [1] This is an application by Ronald Denis Bridges for leave to appeal against a sentence of eighteen months' imprisonment. A minimum term of nine months was fixed before he should be eligible to be released on parole. The sentence was imposed when the applicant pleaded guilty to a charge of robbery. The robbery took place in the early hours of Friday 9 September 1983. The applicant was travelling in his car with a man named Hogarth as a passenger along Main Road, Lower Plenty towards Heidelberg. Both had been drinking for some hours at the Lower Plenty hotel. After travelling a short distance they picked up a hitch-hiker by the name of Vine who offered the applicant $30 to take him to St. Kilda. When asked to show his money, Vine said, "That's all right, I can afford it, I've got $500". Vine gave the applicant a $50 note and received a $20 note by way of change. Later the applicant picked up two other hitch-hikers, drove them a short **[2]** distance and dropped them off.

During the journey the applicant suggested to Hogarth that they "roll" Vine, but Hogarth declined to be a party to it. The applicant stopped in Prahran some 60 metres from St. Kilda Road for the purpose of urinating. When he had done so he asked Hogarth to get out of the car and again suggested that they "roll" Vine. Hogarth again refused. Vine must have become suspicious for he got out of the car and the applicant was heard to say, "I am going to get you". Vine attempted to run away, but owing to an injury to his left leg he was unable to run properly. The applicant overtook him and pushed him hard in the back. He fell to the ground. The applicant demanded Vine's money. Vine gave him his wallet which contained approximately $500. The applicant then said, "Wait here a couple of minutes and then do what you want to". The applicant then left the scene and hid because he saw a police car in the vicinity but he was apprehended at about 6 o'clock that morning. When questioned the applicant first denied committing the offence, but later admitted it and said that he had first decided to rob Vine when Vine "first started flashing the $500 around".

A plea was made by counsel on the applicant's behalf. He is a man of 29 years of age with no very significant prior convictions. It was said that the offence was not premeditated, that it was in a sense caused by the indiscretion of the victim, that it was out of character and that by his plea of guilty and his co-operation with the police the applicant had shown real remorse.

The investigating officer gave evidence on his behalf and expressed the opinion that he would not commit a similar offence again. **[3]** After hearing the plea the learned trial judge sentenced the applicant to be imprisoned for a term of eighteen months and fixed a minimum term of nine months before he should be eligible to be released on parole. The Court formed the view that the sentence so imposed was excessive in all the circumstances and that a different sentence should have been passed. It reached the conclusion that if the Superintendent of the attendance centre nearest to the applicant's place of living considered the applicant to be a fit person to undergo attendance at an attendance centre, the Court would permit him to serve the sentence it intended to pass upon him at an attendance centre (see *Crimes Act* 1958, section 476 and *Penalties and Sentences Act* 1981, section 36(1) The court instituted appropriate enquiries and was informed on

5 June that the Superintendent of the Thornbury Attendance Centre considered the applicant to be a fit person to undergo attendance at the attendance centre but that there was no vacancy at that centre until 19 July. This information raised the question whether the Court could sentence the applicant, permit him to serve the sentence at the Thornbury Attendance Centre and order that the attendance commence on a date some six weeks from the passing of the sentence and if the Court could do so, whether having regard to what was said in *R v Hill* [1983] VicRp 84; [1983] 2 VR 231 at p237, per Young CJ and Southwell J the Court should do so.

Accordingly the Court adjourned the further consideration of the application to enable the Court to have the assistance of counsel's argument on the question so raised. On the adjourned hearing we heard helpful argument from counsel. Mr Read who appeared for the Crown led us **[4]** through the legislative labyrinth that governs attendance at an attendance centre. There are six such centres presently operating in Victoria. They are known as Thornbury, Spotswood, Blackburn, Bendigo, Geelong and the Southern Attendance Centre which is situated at Prahran. The maximum number of offenders who may be registered at each attendance centre is prescribed by section 42(6) of the *Penalties and Sentences Act* 1981. That sub-section provides that the register of offenders at each attendance centre shall be so arranged that not more than 60 offenders attend on any one day from Monday to Friday inclusive and not more than the specified number are at any time registered for attendance at the centre. The specified number of offenders who may be registered except in the case of Bendigo is 120: see Vic *Gov Gaz* No. 75, 27 July 1983, p2337. We were also provided with a statement by the Office of Corrections dated 7 June 1984, which read as follows:

ATTENDANCE CENTRE	CURRENT VACANCIES	No. OF TIMES FULL IN LAST 12 MTHS	MAXIMUM No. of OFFENDERS "QUEUED"	LONGEST PERIOD OFFENDER "QUEUED"
Blackburn	8	Nil	-	
Southern	6	3 (12 days in total)	4	2 weeks
Spotswood	2	6 (16 days in total)	Nil	
Thornbury	Nil	4 (12 weeks in total inc. one 6 week period)	11	5 weeks
Bendigo	35	Nil		-
Geelong	19	Nil		

[5] It seems clearly to follow from this table that orders are being made to operate from a date substantially later than the date of the order. In *R v Hill*, *supra*, the Chief Justice and Southwell, J said:

> "Speaking generally we should have thought that an attendance centre order would not ordinarily specify a commencing date more than about seven days after the making of the order".

We think that that statement, although *obiter*, was correct and we shall give our reasons for so thinking. The power to make an attendance centre order derives from section 476 of the *Crimes Act*. An attendance centre "order" is not defined but doubtless means an order permitting an offender to serve a sentence of imprisonment at an attendance centre. The Court is directed not to make an attendance centre order except as authorized by section 36 of the *Penalties and Sentences Act* 1981. Section 37(1) of that Act reads:

> "In making an attendance centre order the court shall—
> (a) specify the place in which and the day and time at which attendance is to commence;
> (b) nominate a superintendent to be responsible for requiring the proper observance of the provisions of this Part and any directions given by the court in relation to the attendance at an attendance centre."

It is also necessary to notice section 122 of the *Community Welfare Services Act* 1970, sub-section (1) of which reads as follows:

> "Subject to the provisions of this section and section 123 and section 202A sentences of imprisonment or of imprisonment with hard labour shall commence upon and be reckoned from the days following, namely—
> **[6]** (a) where the sentence is imposed at a sitting of the Supreme Court or the County Court and the

court does not otherwise order—
the first day of the sitting at which the offender is convicted or pleads guilty; and
(b) in any other cases—
(i) where the offender is detained in custody at the time the sentence is imposed—
the day the sentence is imposed; or
(ii) where the offender is at large at the time the sentence is imposed—
the day the offender is apprehended in pursuance of a warrant of commitment issued in respect of that sentence."

It has been clearly held by this Court, however, that the power in paragraph (a) of that sub-section to order otherwise does not authorise the Court to fix a date for the commencement of a sentence which is either before or after the first day of the sitting but merely confers a power to exclude the first day of the sitting as the date of commencement so as to make the provisions of paragraph (b) apply; see *R v Judge Frederico: ex parte Attorney-General* [1971] VicRp 51; [1971] VR 425.

It follows that if a sentence of imprisonment of twelve months were passed upon an offender and an order made permitting him to serve that sentence at an attendance centre commencing from some date in the future he might be required to attend at the attendance centre after his term of "imprisonment" had expired. We do not think that such a possibility is comprehended by the legislation. On the contrary we think that the legislation contemplates that attendance at an attendance centre should be co-terminous as nearly as possible with the term of the sentence. It is after all the sentence of imprisonment that an offender may be permitted to serve by **[7]** attendance at an attendance centre. On the other hand, the requirement of section 37(1) that the Court specify the day and time at which attendance is to commence is clearly to enable the Court to make an order which is compatible with the arrangements of the attendance centre which the Court proposes to specify and for no other purpose. Thus a commencement date more than seven days after the making of the order should not be specified.

In addition to these reasons there are powerful considerations of policy which indicate that there should be no delay between the passing of the sentence and the commencement of the attendance. The intention to allow an offender to serve a sentence at an attendance centre is clearly inconsistent with the detention of the offender in gaol. Yet if his attendance at an attendance centre is not to commence at once, a question arises how he is to be treated in the meantime. If he has been on bail before sentence is he to be incarcerated until his attendance can begin? If, on the other hand, he has been held in custody up to the time of passing sentence, is he to be set at liberty pending the commencement of his attendance? What is the position if he commits another offence in the interim or is dealt with in the interim for an offence committed before sentence was passed? Perhaps some of the questions which could arise might be answered by section 40 of the *Penalties and Sentences Act* which allows the variation of orders permitting the service of a term of imprisonment at an attendance centre but it is undesirable that such a variation should be sought before the attendance has commenced. In any event many questions would remain but we need not go into them here.

[8] For these reasons we decided that we should not permit the present applicant to serve any sentence which we might impose by attendance at the Thornbury Attendance Centre commencing on 19 July. But on the adjourned hearing of the application on 8 June we were informed that there was a vacancy at the Southern Attendance Centre at Prahran and that the Superintendent of that centre considered that the applicant was a fit person to undergo attendance at the centre. Accordingly we took the unusual course of pronouncing the order of the Court on the application and of indicating that we would give our reasons at a later date. In allowing the applicant to serve his term of imprisonment at the Southern Attendance Centre at Prahran we took into account that the applicant was in a position to drive to Prahran and that the provisions of section 40(6) of the *Penalties and Sentences Act* enable attendance at an attendance centre other than that named in the attendance centre order to be permitted in the circumstances set out in the sub-section. The order which the Court made on 8 June was: Application granted. Appeal treated as instituted and heard instanter and allowed. Sentence quashed. In lieu thereof the applicant is sentenced to be imprisoned for a term of twelve months. Order that the applicant be permitted to serve the sentence by attendance at the Southern Attendance Centre. Attendance to commence at 7.30 a.m. on 9 June 1984. The superintendent of the Southern Attendance Centre to be the person responsible for requiring the proper observance of the provisions of Part III of the *Penalties and Sentences Act*.