

37/99; [1999] VSC 551

**SUPREME COURT OF VICTORIA**

***BALTAS & ANOR: in re BERICHON***

**Harper J**

**23 December 1999**

**CRIMINAL LAW – APPLICATION FOR COMPENSATION BY VICTIMS OF CRIME – FACTORS TO BE CONSIDERED IN DETERMINING APPLICATION: *SENTENCING ACT* 1991, s86(1).**

**In deciding whether or not to grant an application for compensation under s86 of the *Sentencing Act* 1991, a court must take into account, amongst other things, the financial circumstances of the offender. A court is not prevented from making an order simply because it is unable to definitively determine the extent of the financial circumstances of the offender. The court should consider firstly, the effect of the incident upon the applicant and secondly, such evidence as there is concerning the financial circumstances of the offender.**

**HARPER J:**

1. I have before me an application by each of Peter Baltas and Scott Alexander Roberts for compensation for pain and suffering suffered as a result of an offence committed by Brendan Luke Berichon in Box Hill on 20 April 1998. On that day, when asked by Mr Baltas to produce some item of identification, Mr Berichon drew a pistol and fired at Mr Baltas and then at Mr Roberts, wounding both of them. Both have since filed witness statements testifying to the fact that each of them has suffered not simply the physical injuries which were consequent upon their being shot, but also psychological damage as a result of the incident.

2. In his statement Mr Baltas says he now suffers from anxiety attacks, sleeping problems, mood swings, flashbacks and lapses in concentration. He also states that he has sought the help of a psychologist to overcome these problems and that he continues to become very upset when he thinks about the incident. In addition, he feels uncomfortable exposing the visible scarring to his body, which scarring is visible when he is in bathing costume. He also says that his enjoyment in his work has suffered and that the impact on his immediate family, including his girlfriend and his parents, has in his words been "great". He says that he is reminded of the incident either through work or in his personal life every day and that one of those reminders is the scarring which is visible on his body.

3. For his part, Mr Roberts also says that he has suffered psychological problems as a result of the incident. He was granted a transfer out of the immediate metropolitan area of Melbourne following the incident and the receipt of his injuries, that transfer being at his request. He wished to find a work location which was less confrontational than was the situation in the city. He also wished to remove himself from the vicinity of the shooting in Box Hill. He says that his sleep patterns have been adversely affected and that he now has recurrent dreams of again being shot, the effects of the crime are never far from his thoughts and again, as with Mr Baltas, he is reminded of the incident each time he sees the scars on his arm. He says that his family and friends are at times burdened by his account of the incident and by their knowledge of his psychological difficulties following it. He also says that his professional work has been diminished in that he has a reduced capacity for dealing with confrontational situations or situations which he perceives as giving rise to a propensity for confrontation. He also says that his tolerance for certain types of behaviour has decreased and that may affect his work as a policeman.

4. I am satisfied that each of the applicants has suffered both physical and emotional injury as a result of the happenings of April 1998. There is no doubt that Mr Berichon fired a pistol at both of the applicants and that each was struck, one twice, and the other on a single occasion. It is not surprising that in those circumstances each applicant seeks compensation under the relevant provisions of the *Sentencing Act* which are to be found in s86. That section provides that in deciding whether or not to grant an application and, in deciding the amount to be awarded, the court must take into account, amongst other things, the financial circumstances of the offender.

5. In this respect I have been provided with a list of the assets of Mr Berichon which includes, amongst other things, a Toyota Land Cruiser 1983, a 4-wheel-drive model registered in Victoria, a 1988 Ford Fairmont Ghia station sedan, again registered in Victoria, a Toyota Land Cruiser 4-wheel drive, registered in Western Australia, the date of its manufacture is not given, and a camping trailer, also, I take it, registered in Victoria.

6. In addition to the motor vehicles and the trailer, there are listed an Ericsson mobile phone, a futon base and mattress, a number of compact disks and a compact disk player, two television sets, a portable airconditioner, and a video cassette recorder. Of the numerous other items listed, the ones I have mentioned seem to stand out as having a greater inherent value than the remainder.

7. According to the oral evidence given by Mr Berichon this morning, the list is comprehensive and he has no other assets, although I understand that he has an interpleader summons in relation to the proposed sale of certain property by the Northern Territory police, which sale is due to take place on 18 January next.

8. In the circumstances, it is impossible for me to make an accurate assessment of the financial worth of Mr Berichon. It would seem that, even given that he is entitled in full to each of the motor vehicles and the other items to which I have referred, his individual worth is not considerable.

9. On the other hand, although I am required to take the financial circumstances of the offender into account, I am not prevented from making an order simply because I am unable to definitively determine the extent of those circumstances. I proceed, therefore, upon the basis that the considerations which must most directly affect me are first, the effect of the incident on each of the applicants and, secondly, such evidence as I have concerning the financial circumstances of the offender.

10. Doing the best I can, it seems to me that the appropriate sums to be awarded are as follows: \$15,000 to Mr Baltas, who was in direct line of fire and who is the person at whom the pistol was first aimed — and who it seems to me suffered most severely as a result of the incident.

11. Mr Roberts was, as I find, less directly and severely affected, although again the effect on him was by no means inconsiderable or to be thought to be less than he states in his witness statement. It seems to me the appropriate sum to be awarded to Mr Roberts is \$10,000.

12. The result of the applications, therefore, will be that pursuant to s86 of the *Sentencing Act* 1991, I award Peter Baltas the sum of \$15,000 and Scott Alexander Roberts the sum of \$10,000.

**APPEARANCES:** For the applicants Baltas and anor: Mr W Morgan-Payler QC, counsel. Office of Public Prosecutions, solicitor. For the respondent Berichon: Mr C Pearson, counsel. Mulcahy Mendelson & Round, solicitors.

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