80/78

SUPREME COURT OF THE NORTHERN TERRITORY at DARWIN

BAILEY v LACZKO

Forster CJ

17 August 1978 — (1978) 20 ALR 658

OFFENCE OF A TRIFLING NATURE – NATURE OF TRIVIAL OFFENCES – REQUIREMENT FOR MAGISTRATES TO GIVE REASONS FOR DECISION.

Section 75(2) of the *Justices Ordinance* is for all relevant purposes identical to Section 58 in the *Magistrates' Courts Act* 1971. The South Australian *Justices Act* contains similar terms.

In *Crafter v Schubert* (1934) SASR 84 Napier J dealing with the power given by s75(2), says at p86:

> 'It is a highly beneficial power if it is properly used; but it is not a proper use — on the contrary, it is an abuse — of the power if the court allows itself to be carried away by sympathy; and uses the power to defeat the intention of Parliament as it is expressed in the Statute.'

The typical instance of a trivial offence is where the contravention is unintentional or due to inadvertence. To be trivial an offence must be a trivial example of the forbidden acts (*Brebner v Hersey* (1963) SASR 1 at 11). The submissions were that the defendant was ignorant of the provision as were his friends. It was said that he was an amateur fisherman fishing only for sport and that he had done so for 20 years. He is 38 years of age and has no previous convictions of any sort. It was also submitted that if convicted the defendant would lose his net and also would not be entitled to obtain a licence or continue to hold one. This last submission was mistaken. The defendant would lose his licence as a result of a conviction but could apply for the re-issue after 12 months and whether or not his net was, forfeited was a matter for the discretion of the magistrate.

FORSTER CJ: I respectfully adopt what his Honour says as being an accurate exposition of the law. In the present case the act forbidden was the placing of a fishing net across the stream so as to close off the whole stream and this is precisely what the defendant did. There is no evidence as to the length of time the net was in position. The defendant caught four fish so that it was probably in position for an appreciable period. Much was made in argument of the phrase 'the typical instance of the trivial offence is where the contravention is unintentional or due to inadvertence'. It was said that the breach by the defendant was both unintentional, and inadvertent because he did not know it was illegal. This argument misunderstands, what his Honour meant. In my view he was referring to unintentional or inadvertent physical acts which are breaches of the law and was not saying that inadvertence or lack of intention based upon ignorance of the law would, taken alone, render the offence trifling or trivial.

Reference should be made to *Booth v Venezia* MC47/1977 and *Farrelly v Little* [1970] VicRp 2; (1970) VR 18. In *Farrelly v Little* [1970] VicRp 2; (1970) VR p181 Little J pointed out at p21 that the decision whether an offence was trifling involved a discretionary judgment which was only appealable or reviewable upon the well known grounds which may be summarised, as saying that it must be shown that irrelevant matters were taken into consideration, relevant matters were omitted from consideration, mistake of fact was made that the respective weight attached to different considerations was demonstrably wrong, or that finally, even if no specific error in thought can be isolated, the ultimate result achieved speaks for itself so that it can be inferred that there must have been some miscarriage of appreciation to produce that result.

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Case Stated by SM posing certain questions of the Supreme Court, one of which was 'when exercising the power given to me pursuant to s75(2) of the *Justices Ordinance* am I required by law to state my reasons for so exercising my discretion'?

FORSTER CJ: It is my view that whereas it is most desirable that Magistrates should give reasons for their decisions whether on the question of guilt or fixing a penalty or exercising any discretion which falls to be exercised, they are not compelled by law to do so. Failure to give reasons makes the task of appellants and of appeal courts a great deal more difficult and may sometimes lead to decisions being upset when the stating of brief reasons would make the decision clear and unlikely to be interfered with.

I accept with respect the statement of Wells J of the Supreme Court of South Australia in *Shrubsole v Rodriguet* (1978) 18 SASR 233; (1978) 78 LSJS 124 at 127; 'In the case before me it was, in my judgment, important for the justices at least to mention briefly, for the reasons just advanced, the factors which affected or influenced them in imposing the sentence. All that can be said is that I am left without the assistance that such remarks would offer when considering the surrounding circumstances in order to ascertain whether the sentences were fixed "in the due and proper exercise of the court's authority": see *Cranssen v R* [1936] HCA 42; (1936) 55 CLR 509; (1936) 10 ALJR 199.'
