

09/00; [2000] VSC 29

SUPREME COURT OF VICTORIA

TAYLOR v VUKOVIC

Eames J

9 February 2000

PRACTICE AND PROCEDURE – PERSON INJURED BY CRIMINAL ACT – APPLICATION BY PERSON FOR COMPENSATION FOR PAIN AND SUFFERING – APPLICATION BROUGHT MORE THAN SIX MONTHS AFTER OFFENDER CONVICTED OF OFFENCE – APPLICATION OUT OF TIME – WHETHER COURT HAS JURISDICTION TO DEAL WITH THE APPLICATION – APPLICATION DISMISSED – NO ORDER FOR COSTS: SENTENCING ACT 1991 S86(5)(a), 86(9D).

Section 86(5)(a) of the *Sentencing Act* 1991 ('Act') provides that an order for compensation may be made on an application for compensation for pain and suffering no later than six months after the offender is found guilty of or convicted of the offence. On 7 April 1999, V. pleaded guilty to one count of intentionally causing serious injury to T. T. filed an application for compensation for pain and suffering on 18 November 1999.

HELD:

1. The terms of s86(5)(a) of the Act make it clear that the time period of six months must run from the day on which the plea of guilty was entered. In the present case, by his plea of guilty, V. was convicted of the charge on 7 April 1999. T's application was brought out of time and accordingly, the court had no jurisdiction to deal with the matter. In those circumstances, the application is dismissed.

2. Section 86(9D) of the Act provides that in such proceedings each party must bear their own costs unless the court otherwise determines. Whilst the court has a discretion, no order for costs should be made in the present case.

EAMES J:

1. An application was brought by Dr Andrew Taylor pursuant to s86(1) of the *Sentencing Act* 1991 seeking compensation for injuries, loss and damage suffered by him as a result of the criminal act of Zuber Vukovic, who pleaded guilty to one count of intentionally causing serious injury to Dr Taylor. I listed the matter today for directions relating to the application which had been made on behalf of Dr Taylor, and all relevant parties, including — and I express my gratitude to him — counsel for the DPP, attended through their counsel for the purpose of the directions hearing.

2. A preliminary issue has arisen concerning my jurisdiction to deal with this application further. I gave very last-minute notice to at least two of the counsel for the parties before me that there appeared to be a difficulty that I could perceive relating to jurisdiction, and they had a brief but, so it appears, sufficient opportunity to consider the issue and were content to make submissions today with respect to the matter and not seek to prolong the issue further by seeking an adjournment.

3. The issue relates to the terms of s86(5) of the Act, which provides that an order under sub-s(1) "may be made on an application made as soon as practicable (and, in the case of an application for compensation for pain and suffering, no later than six months) after the offender is found guilty, or convicted of the offence."

4. In this case the plea of guilty by Mr Vukovic was entered on 7 April 1999. The case was then adjourned to enable further material to be obtained, because, on the day that the plea of guilty was entered, counsel for Mr Vukovic advised that he had only that day been briefed and wanted the opportunity to obtain further information and material relating to submissions on sentence. As a result of those events there was a more prolonged delay between the time of the plea of guilty and the date of sentencing in this case than would usually be the case, and I sentenced Mr Vukovic on 28 May 1999.

5. The application for compensation in this case was dated and filed with the court on 18 November 1999 and accordingly was beyond six months from the day on which the plea of guilty was entered, although it was within ten days of six months running from the date of sentence. The terms of s86(5)(a) make it clear, in my opinion, however, that the time period of six months in this case must run from the day on which the plea of guilty was entered, by which plea Mr Vukovic was convicted. In those circumstances the application which is brought here is out of time and accordingly the court has no jurisdiction to deal with the matter. That conclusion is one which counsel before me do not seek to challenge and, indeed, accept that it is the correct interpretation of the legislation as it relates to the circumstances of this case.

6. I add that Dr Taylor retains his civil rights to claim damages at common law. That entitlement to take proceedings, apart from the application for compensation under the *Sentencing Act*, is retained for him by the terms of s86(10). Accordingly, he may if he chooses bring such proceedings as he deems appropriate for damages at common law. That, however, is a matter separate and distinct from the application before me, which application, as I have said, must be dismissed by virtue of the failure to bring proceedings within the time prescribed.

7. Application has been made for costs by counsel for Mr Vukovic, but in all the circumstances it seems to me appropriate that no order as to costs should be made and that all parties should bear their own costs. In making that order I have regard to the fact that the Act itself by s86(9D) provides that in such proceedings each party must bear their own costs of the proceeding unless the court otherwise determines. Whilst the court has a discretion, therefore, to make an order for costs, and whilst it might be that in many circumstances an application brought out of time would lead to a costs consequence for the person who brought the application, it seems to me in all the circumstances that the justice of the situation is that an order for costs should not be made. The fact that the proceedings were brought out of time, as I indicated in the course of discussion with counsel, most probably was an unfortunate consequence of the fact that the sentencing in this case was delayed for a period beyond that which would normally be the situation. Whatever the circumstances may have been which led to that, in my view a costs consequence should not flow against the applicant, and accordingly my orders will be:

8. The application will be dismissed and there will be no order as to costs.

9. I direct that a copy of these reasons be placed on the court file.

APPEARANCES: For the applicant Dr Taylor: Mr R Wilcox, counsel. David Gibbs & Associates, solicitors. For the respondent Vukovic: Mr J Gates counsel. Basil Nuridini, solicitor. For the DPP: Mr J Dickson QC. Solicitor for Office of DPP.
