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SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v BRATTOLI

Winneke CJ, Adam and Newton JJ

7 December 1970 — [1971] VR 446

CRIMINAL LAW – SENTENCE – DATE OF COMMENCEMENT – WHETHER POWER TO ANTEDATE THE COMMENCEMENT OF SENTENCE – VALIDITY OF SENTENCE – IMPOSITION OF SECOND SENTENCE – VALIDITY: GAOLS ACT 1958 (NO. 6259), S18(1) (AS AMENDED BY GAOLS (COMMENCEMENT OF SENTENCES) ACT 1966 (NO. 7469).

The applicant was convicted in the County Court on 21 October 1970 of breaking and entering. The trial judge thereupon sentenced him to be imprisoned for 12 months, such sentence to commence from 23 July 1970. Thereafter the judgment of the Full Court in *R v Judge Frederico; Ex parte Attorney General* (1971) VR 425, was brought to his attention, and the applicant was brought back before the trial judge on 26 October 1970 and sentenced to a term of nine months' imprisonment. After the imposition of the first sentence on 21 October the triplicate was completed by the trial judge and by the registrar of the County Court and sent to the proper authorities. After the sentence was imposed on 26 October 1970 a second triplicate was signed by the trial judge and the registrar and again transmitted to the proper authorities. The applicant applied for leave to appeal against the conviction and the sentence of nine months' imprisonment imposed on 26 October 1970.

HELD: The sentence passed on 21 October was an invalid sentence and the signing of the triplicate by the trial judge and the registrar gave no legal validity or effect to it. The sentence passed on 26 October was a valid sentence.

R v Judge Frederico; Ex parte Attorney General (1971) VR 425, applied.

R v Hodgkinson (1954) VLR 140; (1954) ALR 305, distinguished.
