

33/87

SUPREME COURT OF VICTORIA

ANTONIE v DIRECTOR-GENERAL of CORRECTIONS

O'Bryan J

25 September 1987

CRIMINAL LAW – SENTENCING – ACCUSED CHARGED WITH OFFENCES AND HELD IN CUSTODY – PAROLE BOARD WARRANT EXECUTED – WHETHER SUCH PERIOD SPENT IN CUSTODY TO BE RECKONED AS A PERIOD ALREADY SERVED WHEN LATER SENTENCED: CORRECTIONS ACT 1986, S60(3); PENALTIES AND SENTENCES ACT 1985, SS15, 16.

A. was arrested on 3 May and charged with numerous offences. Bail was refused. On 5 May, a warrant of apprehension issued on behalf of the Parole Board was executed on A. and he commenced to serve an unexpired term of imprisonment of 12 months and 4 days. On 7 August, A. pleaded guilty to many of the offences and was sentenced to 24 months' imprisonment.

Subsequently, A. claimed that the period spent in custody from 5 May until 7 August should have been reckoned as a period already served when he was sentenced on 7 August. On application for an order that a writ of *habeas corpus* issue—

HELD: Application dismissed.

(1) Section 16 of the *Penalties and Sentences Act 1985* provides that unless the court otherwise orders, any period spent in custody in relation to proceedings for that offence shall be reckoned as a period of imprisonment already served.

(2) Section 16 did not apply in A's case because his committal to prison on 5 May was for some cause not connected with the proceedings which resulted in the new sentence on 7 August.

O'BRYAN J: [1] The plaintiff applied on Summons for an order that a writ of *Habeas Corpus ad subjiciendum* issue calling upon the defendant to make a return to the said writ, stating the grounds of the detention of the plaintiff. The summons was served upon the defendant who was represented by Mr Strong of counsel. The plaintiff appeared in person. On a date prior to 1979, which was not revealed in the material, the plaintiff received sentences of imprisonment. On 29th May 1981 the Adult Parole Board ordered that the plaintiff be released on parole. The order became effective on 17th July when the plaintiff was released. The Board ordered cancellation of parole on 21st May 1982 and caused a warrant to apprehend the plaintiff and return him to prison to issue. [2] On 3rd May 1986 the plaintiff was arrested and charged with multiple counts of theft, forgery, uttering, theft by deception, failure to appear on bail, burglary, trafficking, possession and using drugs. He was remanded in custody without bail. On 5th May, the 1982 warrant was executed and the plaintiff thereupon commenced to serve the unexpired term of the sentences imposed prior to or during 1979. No issue is raised that the unexpired term of imprisonment at that date was twelve months and four days.

On 7th August the plaintiff pleaded guilty to many of the offences with which he was charged in May and was sentenced to twenty four months' imprisonment in total. No order was made that the new sentence may be served concurrently with the uncompleted sentence he was undergoing but a recent provision in the *Penalties and Sentences Act 1985*, s15, had the result that from the date of the commencement of the new sentence the new sentence would be served concurrently with the uncompleted sentence.

Pursuant to s60(3) *Corrections Act 1986* and the Regulations thereunder, the plaintiff is entitled to a remission from the new sentence totalling approximately eight months. Assuming that the new sentence will date from 7th August and not 3rd May as the plaintiff contends, the plaintiff will be due to be released, at earliest, on 16th December 1987.

The plaintiff contended, and this is the basis for the Summons, that the time he spent

in custody between 3rd May and 7th August must be reckoned as a period of [3] imprisonment already served by him under the sentence imposed on 7th August. The issue raised by the plaintiff requires the Court to consider the provisions of s16 of the *Penalties and Sentences Act 1985*.

Section 16 provides so far as relevant:

"(1) If a person is convicted of an offence and sentenced to a term of imprisonment ... in respect of that offence, any period of time during which that person was held in custody in relation to proceedings for that offence ... shall unless the Court otherwise orders, be reckoned as a period of imprisonment ... already served by that person under the sentence.

(2) The provisions of sub-section (1) do not apply—

(a) Not relevant;

(b) in respect of any period referred to in sub-section (1) during which the person ... for some cause not connected with the proceedings for the offence in respect of which that person is presently being sentenced;"

The plaintiff submitted that ss(2)(b) does not apply because, in the circumstances in which he was first remanded without bail for offences and then imprisoned in respect of antecedent offences when the warrant was executed, a causal connection existed between the fresh proceedings and the earlier proceedings.

The plaintiff deposed that "my detention must as a matter of law have been connected with the sentence imposed on 7th August, where from 3rd May to 7th August I was held in custody on each of two warrants, including the remand warrants, directing my imprisonment for the offences that I was subsequently sentenced on." The point comes down to this – that because the plaintiff was being held on remand at the same time that he was being held on the warrant he was being held for some [4] cause connected with the proceedings for the offences in respect of which he was subsequently sentenced.

Mr Strong for the defendant submitted that ss(2)(b) on its proper construction meets the circumstances of the present case and deprives the plaintiff of the benefit provided by ss(1). After the warrant was executed on 5th May, Mr Strong submitted that the plaintiff commenced to serve the balance of the unexpired sentence, a matter not connected with the proceedings which produced the fresh sentence on 7th August. That the plaintiff was also awaiting trial for further offences was not for a cause connected with the earlier proceedings.

I agree with this view of the operation of s16. In my opinion ss(2)(b) operates so that the provisions of ss(1) do not apply to allow the period between 5th May and 7th August to be reckoned as a period of imprisonment already served by the plaintiff when he was sentenced on 7th August. The plaintiff was committed to prison on 5th May for some cause not connected with the proceedings which resulted in the new sentence on 7th August. The Summons is dismissed.