

28/79

## FEDERAL COURT OF AUSTRALIA — GENERAL DIVISION

**WILLIAMS v R**

Blackburn, Franki and St John JJ

2 March 1979 — [1979] 45 FLR 367; (1979) 23 ALR 369; 39 ALT 101

**CRIMINAL LAW – CONSPIRACY – COMMON DESIGN – RELEVANCE OF MOTIVE – CONSPIRACY TO CAUSE POLICE TO ACT CORRUPTLY – CORRUPTION INCONSISTENT WITH PERFORMING DUTY – CONSPIRATORS WITH DIFFERENT PURPOSES – BRIBERY – PAYMENT TO CAUSE POLICE TO DO DUTY – PAYMENT CONSTITUTES BRIBERY: *CRIMES ACT 1914 (CTH)* S73.**

**INDICTMENT – ONE COUNT CONTAINED IN – PLEA OF NOT GUILTY – SUBSEQUENT AMENDMENT OF INDICTMENT – MAINTENANCE OF PLEA TO INDICTMENT WITH ONE CHARGE – CONVICTION ON LATER INDICTMENT WITH THREE CHARGES – ACCUSED NOT ASKED TO PLEAD TO EACH COUNT.**

**SENTENCE – BRIBERY OF POLICE – WHETHER ERROR OF PRINCIPLE – WHETHER DISPROPORTIONATE.**

Section 73 of the *Crimes Act 1914* (Cth) made bribery of a Commonwealth officer an offence. In s73(3), bribery was defined as including: "the giving, conferring or procuring of any property or benefit of any kind in respect of any act done or to be done, or any forbearance observed or to be observed, or any favour or disfavour shown or to be shown, in relation to a matter arising under a law of the Commonwealth or of a Territory or otherwise in relation to the affairs or business of the Commonwealth or of a Territory."

A. was charged that he conspired with M. to obstruct the course of justice by causing two Australian Capital Territory policemen to act corruptly in relation to the pressing of criminal charges. A. was also charged with two counts of attempting to bribe the same policemen. The Crown alleged that A.'s purpose was to have the charges suppressed and that M.'s purpose was to have the money paid so that he could get part of it. A.'s defence to the attempted bribery charges was that he paid money to the policemen in order to encourage them to proceed further in their investigation in the belief that he, A. would thereby be exonerated. The trial judge directed the jury that A.'s stated purpose of lack of intention to divert the policemen from their duty was no defence to the charges of attempted bribery. He further directed that it was no defence to the charge of conspiracy that the conspirators each had a different purpose, A. to have the policemen continue their investigations and thus not press charges and M. to receive part of the bribe moneys, since motive was not relevant to common design. The Trial judge did not direct the jury on the incongruity of acceptance of A.'s story as to his purpose in giving the money to the policemen with a finding that A. was guilty of conspiring with M. to cause those policemen to act corruptly.

A. was convicted on all charges. On the charge of conspiracy, he was sentenced to two years' imprisonment with a non-parole period of one year. On each charge of attempted bribery, A. was sentenced to six months' imprisonment, all sentences to be concurrent. A. appealed, complaining of the aspects of the summing up of the trial judge referred to above.

**HELD:**

1. **The convictions of attempted bribery should be affirmed because, *per curiam*, s73 of the *Crimes Act* makes criminal a payment to a police officer for the purpose of encouraging him to do his duty.**

2. **The sentences in respect of the attempted bribery convictions should be affirmed because, *per curiam*, the sentences were not shown to have been based upon any error of principle nor to have been manifestly disproportionate;**

3. **Per Blackburn J (St John J, concurring; Franki J dissenting): The distinction made by the trial judge between the motive for which a conspirator takes part in the conspiracy and the object of the conspiracy was correct. If A. and M. had a common design to effect an unlawful purpose, namely the corruption of the constables, then the fact (if a fact) that A. and M. had different personal reasons for conspiracy was not a defence available to A.**

4. **The appeal against conviction on the charge of conspiracy should be upheld because, per Blackburn J, St John J concurring): The trial judge failed to direct the jury that the evidence did not permit both the inference that A. conspired to corrupt the police and the inference that he paid them the money to encourage them to do their duty and thus, that convictions on the attempted bribery**

charges, if they were on the latter footing, necessarily entailed acquittal on the charge of conspiracy.

Per Franki J: If the jury had accepted the story of A. and also had accepted that M. had the design to have the money paid to cause the police constables to act illegally, then the jury could not have been satisfied that there was a common design. The summing up of the trial judge was inadequate on the issue of the relevant common design charged.

Observation by Blackburn J as to the irregularity of maintenance of a plea to an earlier indictment with one charge by way of plea to a later indictment with three charges.

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