

11/78

COURT OF CRIMINAL APPEAL of QUEENSLAND

R v ASH**Douglas, WB Campbell and Andrews JJ****[1978]**

CRIMINAL LAW - SENTENCING - WELFARE FRAUD - IMPOSITION ON COMMONWEALTH - UNEMPLOYMENT BENEFITS IMPROPERLY OBTAINED - 19 CHARGES LAID - IMPRISONMENT IMPOSED ON 18 CHARGES AND DISCHARGE ON RECOGNIZANCE ON 19TH CONDITIONED THAT HE PAY RESTITUTION OF FULL AMOUNT INVOLVED IN 19 CHARGES - WHETHER POWER TO ORDER RESTITUTION OF AN AMOUNT GREATER THAN AMOUNT INVOLVED IN ANY PARTICULAR CHARGE: CRIMES ACT (CTH), S29B.

A magistrate when dealing with a person charged with 19 offences involving welfare fraud, sentenced the person on 18 of the charges to a sentence of imprisonment and on the 19th charge released him on a recognisance for 12 months and imposed a condition that he repay the full amount said to have been improperly obtained, namely the amount of \$1616.40.

HELD: Appeal allowed. Order in relation to the reparation order set aside.

The Magistrate was able to deal on the 19th charge only with the amount of restitution covering the amount claimed by the applicant in respect of the period covered in the 19th charge. That was \$87. The Stipendiary Magistrate therefore was wrong in requiring that the applicant repay the amount of \$1616.40. The only amount that he could have required the applicant to repay was \$87.

DOUGLAS J: The applicant who asks leave to appeal was charged with 19 charges under section 29B of the *Crimes Act* to the effect that he had imposed upon the Department of Social Security by means of an untrue representation that unemployment benefits fortnightly statement of income in his name was a true and correct claim for unemployment benefits. To each charge he pleaded guilty, and a conviction was recorded.

On the first 18 convictions he was sentenced to imprisonment for four months. In respect of the 19th charge the Stipendiary Magistrate recorded thus: 'Defendant is convicted without passing any sentence upon him. I release him on his entering into recognisance in the sum of \$200 to be of good behaviour for a period of 12 months from date hereof and further conditional that he shall repay the amount of \$1616.40 to the Department of Social Security, 295 Ann Street; Brisbane within a period of 12 months from date hereof, in default imprisonment for a period of six months.'

It is somewhat obscure as to how the Stipendiary Magistrate arrived at this method of punishment. However, it is not necessary, I feel, to consider the matter very deeply. The situation is that in this final conviction in respect of restitution the Stipendiary Magistrate ordered restitution of \$1616.40 which was the totality of the amount of restitution required in respect of the 19 charges.

Plainly the Magistrate was able to deal on the 19th charge only with the amount of restitution covering the amount claimed by the applicant in respect of the period covered in the 19th charge. That was \$87. The Stipendiary Magistrate therefore was wrong in requiring that the applicant repay the amount of \$1616.40. The only amount that he could have required the applicant to repay was \$87.

WB CAMPBELL J: I agree with the order proposed by my learned brother.

ANDREWS J: I would agree, and would add that in relation to the first 18 charges in my view the proper way to approach the appeal with relation to them is to ask whether or not the orders made imposed a sentence which was manifestly inadequate. As they do not appear to me to be manifestly inadequate I would leave them alone.