

Inder-Smith & Ors v Tudor-Stack [2007] NTSC 11

PARTIES: ROBERT PAUL INDER-SMITH
STUART HIGHWAY
EMA BIRKELAND-CORRO and MICHAEL LAMBE

v

PAUL FRANCIS TUDOR-STACK

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING
APPELLATE JURISDICTION

FILE NOS: JA 100, JA 102, JA 103 & JA 104 of 2003 (20207624, 20207648, 20207651 &
20207640)

DELIVERED: 26 February 2007

HEARING DATE: 12 February 2007

JUDGMENT OF: SOUTHWOOD J

CATCHWORDS:

JUSTICES ACT – Justices appeal – intentionally disturbing the Legislative Assembly while in session – contrary to s 61(a) of the Criminal Code – sentences of imprisonment manifestly excessive – appeal allowed – appellants re-sentenced.

Dinsdale v R (2000) 202 CLR 321; Hoare v The Queen (1989) 167 CLR 348; Veen v The Queen [No 2] 164 CLR 465, applied

REPRESENTATION:

Counsel:

First Appellant: I Read

Second Appellant: I Read

Third Appellant: G Holden

Fourth Appellant: Self represented

Respondent: A Elliott

Solicitors:

First and Second Appellants: Northern Territory Legal Aid Commission

Third Appellant: Self represented

Respondent: Office of the Director of Public Prosecutions

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

AT DARWIN

Inder-Smith & Ors v Tudor-Stack [2007] NTSC 11
 Nos JA 100, JA 102, JA 103 & JA 104 of 2003
 (20207624, 20207648, 20207651 & 20207640)

IN THE MATTER OF the Justices Act

AND IN THE MATTER OF an appeal against sentence handed down in the Court of Summary
 Jurisdiction at Darwin

BETWEEN:

ROBERT PAUL INDER-SMITH, STUART HIGHWAY,
 EMA BIRKELAND-CORRO and MICHAEL LAMBE
 Appellants

AND:

PAUL FRANCIS TUDOR-STACK
 Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 26 February 2007)

Introduction

[1] On 5 June 2003 following a summary trial each of the appellants was found guilty and convicted by the Court of Summary Jurisdiction of one count of intentionally disturbing the Northern Territory Legislative Assembly while in session on 14 May 2002 contrary to s 61(a) of the Criminal Code. The offence carries a maximum penalty of three years imprisonment.

[2] Each of the appellants received the following sentences of imprisonment for the crime that he or she committed. Mr Inder-Smith was sentenced to 21 months imprisonment. Mr Highway and Ms Birkeland-Corro were each sentenced to 18 months imprisonment. The Court of Summary Jurisdiction ordered that the sentences of imprisonment imposed on Mr Inder-Smith, Mr Highway and Ms Birkeland-Corro be suspended after they had served five months imprisonment and fixed operational periods of two years from the date that they are released from prison. Mr Lambe was sentenced to 16 months imprisonment. The Court of Summary Jurisdiction ordered that his sentence of imprisonment be suspended after he had served four months imprisonment and fixed an operational period of two years from the date that Mr Lambe is released from prison.

[3] Each of the appellants appeals against his or her sentence. The appeals were heard together on 12 February 2007. The grounds of appeal that were relied on by Mr Inder-Smith were that the presiding magistrate erred in finding that the offence committed by the appellant was a serious example in the upper range of such offending and that the offence was absolutely unmitigated by normal circumstances; the presiding magistrate erred in not making any distinction between the appellant and Mr Meyerhoff, who is now deceased, and similarly erred in creating unduly disparate sentences with the offenders Stallard-Bryce, Masters and Deacon; the presiding magistrate erred in placing undue weight upon deterrence and imposed a sentence which was disproportionate to the objective seriousness of the offending; and that in all of the circumstances the learned magistrate imposed a

sentence which was manifestly excessive. Mr Highway relied on the same grounds of appeal as Mr Inder-Smith.

[4] Ms Birkeland-Corro relied on the following grounds of appeal: that in all of the circumstances the presiding magistrate imposed a sentence that was manifestly excessive; the presiding magistrate erred in placing undue weight on general deterrence; the learned magistrate erred in failing to apply parity of sentencing considerations by imposing widely disparate sentences compared with those of the co-offenders Stallard-Bryce, Masters and Deacon; the learned magistrate erred in placing undue weight on specific deterrence; and the learned magistrate erred in law in failing to give sufficient weight to Ms Birkeland-Corro's youth and lack of previous convictions.

[5] Mr Lambie largely adopted the grounds of appeal that were argued by the other appellants. He also argued that the presiding magistrate did not give enough weight to his subjective circumstances, in particular the frustration and anger he suffered as a result of various events involving the police and others in his past.

The principal issue
[6] The principal issue in each of the appeals is whether the sentence of imprisonment was manifestly excessive. In my opinion each sentence of imprisonment was manifestly excessive and each of the appeals should succeed.

The facts
[7] In the past each of the appellants either has been a member of or sympathised with the "Network Against Prohibition" which is an association that is against the criminalisation of drug use because such laws do more harm than good. The "Network Against Prohibition" was strongly opposed to the amendments to the drug laws that were introduced into the Northern Territory Legislative Assembly in 2002.

[8] In May 2002 there was a meeting at the home of Mr Meyerhoff in Ludmilla. Those in attendance at the meeting including Mr Inder-Smith, Mr Highway and Ms Birkeland-Corro resolved that they should attend at Parliament House and demonstrate against the passing of proposed amendments to the Misuse of Drugs Act. The amendments which subsequently became law introduced the so-called "drug houses legislation". It was decided that, if possible, they should carry the demonstration into the Chamber of the Legislative Assembly in Parliament House. A minibus was hired to take some of the demonstrators including Mr Inder-Smith, Mr Highway and Ms Birkeland-Corro to Parliament House.

[9] On the morning of Tuesday 14 May 2002, each of the appellants and a group of seven or eight other demonstrators entered Parliament House to observe proceedings in the Legislative Assembly. They gained entrance to Parliament House through the visitors' entrance in the usual manner. However, they hid placards and banners under their clothing. The appellants and the other demonstrators sat in the upstairs public gallery which overlooks the Legislative Assembly. The gallery is enclosed with soundproof glass. After a period of time the Members of the Legislative Assembly began to consider the proposed new laws concerning so-called "drug houses". At about 11:45 am, while the Legislative Assembly was still in session, a group of nine demonstrators, including the appellants, left their seats in the gallery and went downstairs to what is called the 2nd level of Parliament House where they opened the main entrance door to the Chamber of the Legislative Assembly. The door was closed but not locked. The nine demonstrators, including the

appellants, then entered the Chamber of the Legislative Assembly. One of the demonstrators was shouting out the words 'police state'.

[10] Each of the appellants walked about the Legislative Assembly holding up and waving placards and calling out. Mr Meyerhoff and Ms Birkeland-Corro climbed onto the speaker's chair and desk and Mr Meyerhoff, Ms Birkeland-Corro and Mr Inder-Smith climbed up onto the parliamentary table which is the wide table in the centre of the Chamber of the Legislative Assembly around which Honourable Members are seated and conduct the business of the Legislative Assembly. While walking on the table they continued shouting and waving placards. Mr Higway was reasonably quiet apart from a confrontation with Mr McNeil, the Clerk of the Legislative Assembly. Upon his entry into the Chamber Mr Lambe did not proceed into the well of the Chamber. He moved along the side of the Chamber towards the Government Lobby door where he engaged in conversation with some of the Members of the Legislative Assembly. He is later seen on the video wandering about the floor of the Chamber superintending the actions of the demonstrators.

[11] As a result of the actions of the demonstrators, including the appellants, the Legislative Assembly was interrupted for about 10 to 15 minutes and proceedings were suspended due to the disturbance created by them. It is difficult to precisely determine how long the intrusion into the Chamber of the Legislative Assembly lasted. The video of the demonstrators in the Chamber lasts for about four and a half minutes. The Speaker expressed her concern for the safety of Members of the Assembly and asked the Honourable Members to leave the Chamber of the Legislative Assembly. Some Members of the Legislative Assembly left the Chamber, other Members of the Legislative Assembly stayed and watched the demonstrators, while other Members exchanged words with the demonstrators and spoke about the reasons for the proposed new drug laws.

[12] Entry to the Chamber of the Legislative Assembly by persons other than Members of the Legislative Assembly and staff is by invitation only. None of the appellants had permission to enter the Chamber. Security officers requested the group of demonstrators to leave the building. Some of the group of demonstrators refused and had to be forcibly escorted out of the Chamber. However, none of the demonstrators violently resisted being removed from the Chamber. Police officers attended at Parliament House and seized some of the placards and a video tape which was made by Ms Villalor. Once outside Parliament House the appellants waited for the police and they gave their names to the police officers in attendance.

[13] Each of the appellants defended the criminal proceedings that were brought against them. The defence case lasted for about 13 days. In his sentencing remarks the presiding magistrate stated that he did not recall a single question being asked of any of the witnesses called by the defence which was relevant to the guilt or innocence of the appellants. His Honour said that was not surprising because none of the appellants gave any evidence suggesting that he or she might not be guilty of the offence charged. Further, none of the appellants claimed any remorse. Each asserted in his or her own way that he or she was glad or proud or happy that he or she played a part in the action which constituted the offence.

[14] Mr Inder-Smith was 42 years of age at the date of the offending. He had no prior convictions at the time of his offence. However, he was on bail for the offence of failing to obey a direction to leave the grounds of the Legislative Assembly in connection with what was described as the "tent embassy". He was subsequently convicted of that offence. In his favour, he has done voluntary work over a long time assisting an autistic child. He is a political activist who is concerned about a number of social issues.

[15] Mr Highway was 38 years of age at the time of the offending. He has a number of prior convictions for offences that were related to civil disobedience. He has convictions for resisting police and trespass in 1999, trespass in 1997, failure to leave protected premises, being the Indonesian Consulate, in 1995 and resisting police and failure to vote in 1994. In his favour, he has done a considerable amount of volunteer work in East Timor.

[16] Ms Birkeland-Corro was 22 years of age at the time of the offending. She has no prior convictions. She has what is often described as a social conscience. She was a political activist who has been involved in demonstrations about various social causes since she was 14 years of age.

[17] Mr Lambe was 44 years of age at the time of the offending. He, too, is a political activist. He is strongly against racism and has been involved in a number of political and social activities aimed at reducing racism. Mr Lambe has one relevant prior matter. It is not a conviction. The presiding magistrate had previously found Mr Lambe guilty of throwing some battery hens onto the foredeck of a United States of America Navy Ship.

[18] Numerous Members of Parliament were called to give evidence by the appellants during the summary hearing in the Court of Summary Jurisdiction. Each of the Honourable Members of Parliament who were called to give evidence was angry and upset by the appellants' conduct. Some of the Members of Parliament were made fearful by the appellants' conduct. None of the Honourable Members has suffered any lasting trauma.

The objective circumstances of the appellants' offending

[19] The salient features of the appellants' offending are as follows. The offending is serious. The appellants intentionally disturbed a session of the Legislative Assembly. They did so by prearrangement. Although misguided the appellants made a deliberate political decision to enter the Chamber of the Legislative Assembly. Nine people including the appellants entered the Chamber through an unlocked door. They were shouting and holding up placards which they had smuggled into the building. They did so to demonstrate against the introduction of the so called "drug houses" legislation. A majority of the nine demonstrators, including the appellants, entered the well of the Chamber. Three of the demonstrators including Mr Inder-Smith and Ms Birkeland-Corro got onto and walked up and down the parliamentary table. Two of the demonstrators including Ms Birkeland-Corro got onto the speaker's chair and desk. The appellants had to be removed from the Chamber. Order was quickly restored. The actions of the appellants and other demonstrators caused a session of the Legislative Assembly to be suspended for 10 to 15 minutes. The demonstration was peaceful. There was no violence. The appellants acted conscientiously and not malevolently. They believed that the proposed legislation was unjust and not in the interests of the people of the Northern Territory. The actions of the demonstrators including the appellants made some of the Members of Parliament fearful.

Conclusion

[20] Section 61(a) of the Criminal Code is a statutory provision, the purpose of which is to prohibit people from committing contempt of the Legislative Assembly. Such provisions are necessary to protect the Legislative Assembly from unwanted disturbances and to ensure that the functions and authority of the Legislative Assembly are not improperly interfered with.

[21] However, "a basic principle of sentencing law is that a sentence of imprisonment imposed by a

court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in the light of its objective circumstances”: Hoare v The Queen (1989) 167 CLR 348 at 354; Veen v The Queen [No 2] (1988) 164 CLR 465.

[22] Each of the appellants should have been sentenced on the objective circumstances of his or her offending and sufficient weight given to the matters personal to each of the appellants. In imposing the sentences of imprisonment that the presiding magistrate imposed on each of the appellants, I consider that the presiding magistrate erred in that the objective facts of the offence committed by each appellant and the personal circumstances of each appellant were such that each of the sentences of imprisonment was manifestly excessive: Dinsdale v R (2000) 202 CLR 321.

[23] While the conduct of each of the appellants created a serious disturbance and was deliberate and the conduct of Ms Birkeland-Corro and Mr Inder-Smith was extremely disrespectful; significant weight should be given to the following factors: the appellants gained entry through an unlocked door, the appellants were behaving consciously, the disturbance to the session of the Legislative Assembly was of very short duration, the actions of each of the appellants were non-violent and non-malevolent, it was unnecessary for a significant number of the Members of the Legislative Assembly to leave the Chamber of the Legislative Assembly, those Honourable Members who wished to leave were able to leave while other Honourable Members chose to remain in the Chamber, there was not a great deal of resistance given by the appellants to being removed from the Chamber of the Legislative Assembly, order was quickly restored and the appellants are not ordinary criminals. Significant weight should also have been given to the fact that Ms Birkeland-Corro was only 22 years of age and she had no prior convictions.

Orders

[24] I make the following orders:

1. The appeal by each appellant against the sentence imposed on them by the Court of Summary Jurisdiction is allowed.
2. The sentence of imprisonment that was imposed on each appellant by the Court of Summary Jurisdiction is set aside.
3. The conviction of each of the appellants of the offence of intentionally disturbing the Legislative Assembly while in session on 14 May 2002 contrary to s 61(a) of the Criminal Code is confirmed.

Re-sentence

[25] I re-sentence each of the appellants as follows. Robert Inder-Smith is sentenced to eight months imprisonment. The sentence of imprisonment is to be suspended after he has served one month of actual imprisonment on the conditions that: he is not to enter Parliament House in Darwin for a period of two years from today; and he is not to associate with the appellants Stuart Highway, Emma Birkeland-Corro and Michael Lambe, either jointly or severally for a period of one year from his release from prison. Pursuant to s 40(6) of the Sentencing Act I specify that he is not to commit another offence punishable by a term of imprisonment for a period of two years from today.

[26] I consider the objective facts of Mr Inder-Smith’s offending to be significantly more serious than that of Mr Highway and Mr Lambe. The trespass upon the parliamentary table significantly elevated the level of the disturbance caused by the demonstrators. His offence was also aggravated by the fact that he committed it while on bail for another similar offence. In sentencing Mr Inder-Smith I have also had regard to various references that were tendered on his behalf. The references

establish that Mr Inder-Smith has worked as a journalist in the past and that he is a voluntary carer for a profoundly autistic teenage boy.

[27] Stuart Highway is sentenced to six months imprisonment. The sentence of imprisonment is suspended forthwith on conditions that: he is not to enter Parliament House in Darwin for a period of two years from today; and he is not to associate with the appellants, Mr Inder-Smith, Ms Birkeland-Corro and Mr Lambe, either jointly or severally for a period of one year from today. Pursuant to s 40(6) of the Sentencing Act I specify that he is not to commit another offence punishable by a term of imprisonment for a period of one year from today.

[28] In sentencing Mr Highway I have also had regard to various references that were tendered on his behalf. The references are to the effect that he is a very community spirited person who has been engaged in community work. For a period of time he worked with the Asia Pacific Support Collective in East Timor assisting Timorese individuals and Non Government Organisations as an interpreter and in proposal writing.

[29] Pursuant to s 13(1) of the Sentencing Act Ms Birkeland-Corro is released upon her giving security herself in the sum of \$500 own recognisance that she will appear before the court if called upon to do so during the period of two years; that she will be of good behaviour for two years from today; that she is not to associate with the appellants, Mr Inder-Smith, Mr Highway and Mr Lambe, either jointly or severally for a period of one year from today.

[30] While the objective facts of Ms Birkeland-Corro's offending were more serious than that of Mr Inder-Smith, I have given significant weight to the following mitigatory factors: she was only 22 years of age at the time of her offending; she had no prior convictions; she is now in gainful employment and she has apologised in writing to the Speaker of the Legislative Assembly. The apology was received by the Speaker of the Legislative Assembly, The Honourable Jane Aagaard, on 23 February 2007. The apology stated as follows:

I wish to apologise for my actions in entering Parliament while the Parliament was in session. I realise now that what I did was wrong and showed great disrespect for Parliament. I regret any distress or inconvenience caused to any of the members present.

I have had a number of years to reflect on my actions, and state that I would not do anything similar.

[31] A report from a consultant clinical psychologist, Mr BJ Healey, was also tendered on behalf of Ms Birkeland-Corro. Mr Healey examined Ms Birkeland-Corro on 9 February 2007. In his report he stated that during the interview Ms Birkeland-Corro manifested self-reproach and a realisation of the need for more rational thought by those wishing to advance a particular cause. She has also expressed shame and regret to her friends and associates. Ms Birkeland-Corro now resides in Melbourne. Since mid 2005 she has been working at the IT 'help desk' at the RMIT University. A reference from her employer was provided to the court. The reference states that Ms Birkeland-Corro is a reliable, honest and punctual employee.

[32] Michael Lambe is sentenced to six months imprisonment. The sentence of imprisonment is suspended after he has served one month of actual imprisonment on conditions that: he is not to enter Parliament House in Darwin for a period of two years from today; and he is not to associate with the appellants, Mr Inder-Smith, Mr Highway and Ms Birkeland-Corro, either jointly or severally for a period of one year from his release from prison. Pursuant to s 40(6) of the Sentencing Act I specify that he is not to commit another offence punishable by a term of imprisonment for a period of two

years from today.

[33] By his submissions to the court Mr Lambe revealed that he remained utterly devoid of any remorse or contrition for his conduct. He still obdurately believes that his conduct was justified. In my opinion there is a risk that he may re-offend. Personal deterrence remains a significant factor. It necessitates that he be incarcerated for a short period of time.

[34] In sentencing Mr Lambe I have also had regard to various references that were handed to the court. The references were to the effect that Mr Lambe is currently the Mindil Beach Sunset Market Association Webmaster and that he is also part of the Mindil Beach Site Crew. Mr Lambe has provided considerable assistance to the Kumbujil Association at the One Mile Dam Aboriginal Community in publicising their problems and in negotiations with the Northern Territory Government and various Government Departments.

[35] In my opinion the sentences that I have imposed on each of the appellants vindicate the authority of Parliament, demonstrate to all citizens that the kind of disturbance created by the appellants will not be tolerated and are sufficient to deter each of the offenders from committing similar acts in the future. Citizens of the Northern Territory, such as the appellants, are entitled to demonstrate if they please for the causes in which they believe but they must do it by lawful means.