

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : THE COURT OF APPEAL (WA)

CITATION : GLEW -v- WHITE [2012] WASCA 138

CORAM : PULLIN JA
BUSS JA
MAZZA JA

HEARD : 5 JULY 2012

DELIVERED : 10 JULY 2012

FILE NO/S : CACR 92 of 2012

BETWEEN : WAYNE KENNETH GLEW
Appellant

AND

RYAN MICHAEL WHITE
Respondent

ON APPEAL FROM:

Jurisdiction : SUPREME COURT OF WESTERN AUSTRALIA

Coram : HALL J

Citation : GLEW -v- WHITE [2012] WASC 100

File No : SJA 1008 of 2012

Catchwords:

Criminal law - Application for leave to appeal - Whether grounds of appeal have any reasonable prospect of succeeding - Abuse of process

Legislation:

Bushfires Act 1954 (WA)

Criminal Appeals Act 2004 (WA)

Criminal Code (WA)

Supreme Court (Court of Appeal) Rules 2005 (WA)

Vexatious Proceedings Restriction Act 2002 (WA)

Result:

Leave to appeal refused

Appeal dismissed

Category: B

Representation:

Counsel:

Appellant : In person
Respondent : No appearance

Solicitors:

Appellant : In person
Respondent : No appearance

Case(s) referred to in judgment(s):

Frank Jasper Pty Ltd v Glew [No 2] [2010] WASC 24

Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007]
WASCA 289

Glew v City of Greater Geraldton [2012] WASCA 94

Glew v Frank Jasper Pty Ltd [2010] WASCA 87

Glew v Shire of Greenough [2006] WASCA 260

Glew v The Governor of Western Australia [2009] WASCA 123

Glew v White [2012] WASC 100

Hedley v Spivey [2012] WASCA 116

Krysiak v Hodgson [2009] WASCA 114

O'Connell v The State of Western Australia [2012] WASCA 96

Samuels v The State of Western Australia [2005] WASCA 193; (2005) 30 WAR
473

Williamson v Hodgson [2010] WASC 95

1 **REASONS OF THE COURT:** This is an application for leave to appeal against the judgment of Hall J who refused the appellant leave to appeal against convictions recorded in the Geraldton Magistrates Court on 23 December 2011. By s 16(2) of the *Criminal Appeals Act 2004* (WA), the appellant has the right of appeal to this court against Hall J's refusal to grant leave to appeal. By virtue of s 18 of the Act, s 9(1) applies. It provides that leave is required for each ground of appeal. Section 9(2) read with s 18 provides that after an appeal is commenced, this court must not give leave to appeal on a ground of appeal unless it is satisfied that the ground has a reasonable prospect of succeeding. By s 9(3) read with s 18, unless the court gives leaves to appeal on at least one ground of appeal in an appeal, the appeal is taken to have been dismissed.

2 The appellant was found guilty in the Magistrates Court of one offence of assaulting a public officer contrary to s 318(1)(d) of the *Criminal Code* (WA) and one offence of obstructing an officer in the execution of his duty, contrary to s 57 of the *Bushfires Act 1954* (WA). He was fined \$1,000 for the first offence, \$400 for the second offence and ordered to pay costs.

3 The prosecution case and the defence case were summarised by Hall J as follows:

The prosecution case

The prosecution case was that on 14 July 2011 two rangers from the City of Greater Geraldton attended at the property of the appellant. They did so in response to a report of a possible fire. As they approached the property they saw smoke.

The officers drove their vehicle up the driveway of the property and were there met by the appellant. The appellant told the officers to leave his property and stated that they were trespassing. He was alleged to have used language that was abusive in tone and content.

One of the officers, Mr Benoit Tomasino, got out of the car. He was confronted by the appellant and was forced by him to return to the car, this involved being pushed at least twice to the back. The appellant then told Mr Tomasino to get into the car. Mr Tomasino said that the appellant closed the car door against one of his legs, forcing him to withdraw it into the car.

Both officers were wearing uniforms identifying their position as rangers of the City of Greater Geraldton. The vehicle that they were driving was also clearly marked as such.

The officers considered it prudent to withdraw and seek assistance. They backed down the driveway, parked across the road and from there called the police.

The defence case

The appellant gave evidence at the trial. He did not deny using force on Mr Tomasino and ordering the officers to leave his property. In essence, his defence was that the officers were trespassing, that they had no lawful right to enter his property and that, therefore, he was not obstructing them in the course of their lawful duties.

The officers had stated in evidence that they were empowered to enter the land of the appellant pursuant to s 14 of the *Bush Fires Act*. The appellant argued that this power of entry related only to bush fires and that the fire on his property was not such a fire. He also submitted that, in any event, the *Bush Fires Act* was invalid [4] - [10].

4 The appellant advanced 12 grounds of appeal against the magistrate's decision, none of which had any reasonable prospect of success. Hall J refused leave to appeal on all of the grounds and as a result, the appeal was dismissed. The grounds advanced and the reasons for dismissing those grounds may be read in Hall J's reasons for the judgment under review: see *Glew v White* [2012] WASC 100.

5 Although the grounds of appeal to this court were originally 12 in number, in their final form in the appellant's case, they read:

RE CACR 92 OF 2012 Glew V White not GLEW V WHITE.

Ground (1) I am a Commonwealth Public Official no 481861701013 my name is Wayne Kenneth of the family Glew, a sovereign subject of and a sworn officer of Her Majesty Elizabeth the second lawful sovereign of Australia, Queen of England and Northern Ireland.

Ground (2) I am entitled to the full protection of the judicial power of the Commonwealth in respect of my property and passage, ref criminal code Act 1995 Commonwealth.

Ground (3) As a living sovereign subject of the crown, all courts must deal with me in common law under chapter III of the Commonwealth Constitution Act 1901 and not in State law/Statute law by employees of the company known as the Department of the Attorney General ABN 70 598 519 443.

Ground (4) At all times the Corporate Courts have dealt with me in State Law contrary to the Commonwealth Constitution and have ignored decisions of the High Court of Australia, Therefore committing contempt of the High Court of Australia and judicial misfeasance.

Ground (5) the use of Supreme Court Rules made contrary to Chapter III of the Commonwealth Constitution Act 1901 is fraud, as is the Supreme Court Act and the Magistrates Court Act of Western Australia 2004. They are Acts not laws and do not have Royal assent by a lawful governor. Both Acts are repugnant to the Federal Constitution Act 1901 and therefore invalid.

Ground (6) all decisions of these pretend corporate courts must be put before a lawful court (Judge and Jury) sitting in common law under chapter III of the Commonwealth Constitution Act 1901.

Ground (7) all magistrates and judges are now formally charged with, Fraud, contempt of the High Court of Australia and judicial misfeasance not excluding slavery of my flesh and blood person.

6 The grounds of appeal are not proper grounds of appeal. They do not comply with r 32(4)(c) of the *Supreme Court (Court of Appeal) Rules 2005* (WA). They do not allege any error.

7 The appellant's case, filed on 19 June 2012, includes the following assertions:

All Acts of Parliament in Australia since 1919, with the signing of the Treaty of Versailles, have not been lawfully enacted due to the fact that there have been no Orders in the Privy Council, ie: the Queen-in-Council, for the Appointments of any Vice Regal executive representatives of the Crown of the United Kingdom to grant the 'Royal Assent' to enact Statute Laws, which was the procedure when the Commonwealth of Australia was 'under the Crown of the United Kingdom' as per the Act of the UK Parliament to Constitute the Commonwealth of Australia (*Victoria 63 & 64, Chapter 12, 9th July 1900*) it follows that all the Appointments of Judges and Magistrates are also Fraudulent.

'A Judge without Jurisdiction is to be disobeyed with immunity'

Australia is Democracy which literally means that the PEOPLE RULE, ie: Sovereignty lies with the People who exercise that 'ultimate authority to make and impose laws' by way of the unanimous Judgements of 12 Free Men empanelled as Jurors who as: 'So Help me God', in order that they can administer Justice.

I, therefore, Challenge the Jurisdiction of the court. This Challenge can only be determined by Special Jury.

I have NO CONTRACT with any person posing as a Magistrate or Judge in either the Commonwealth or the State of Australia, and I do NOT CONSENT to their having any Jurisdiction over me.

I am a FREEMAN-ON-THE-LAND and NOT IN BONDAGE to any person posing as a Judge or Magistrate, nor to any corporation either in Australia or Overseas.

8 The appellant's orders wanted read:

- 1) Case be dismissed with costs.
- 2) Offenders be prosecuted for trespass and wronging a sovereign subject of the Crown under 4B Crimes Act Cth 1914.
- 3) Western Australian courts be judged by special jury to validity.
- 4). Judges & magistrates be indicted for their crimes.

9 The 'case' referred to in wanted order 1 appears to be the prosecution against the appellant which resulted in the convictions in the Geraldton Magistrates Court on 23 December 2011. The 'offenders' referred to in wanted order 2 appear to be the rangers of the City of Greater Geraldton in respect of whom the appellant was found to have offended.

10 The 'authorities' on the appellant's list of authorities include 'Court of Faculties England', 'Magna Charta' [sic], 'Galations 2.4' and '1688 Bill of Rights'.

11 This appeal is an abuse of process. The appellant is well aware that his idiosyncratic contentions have been repeatedly rejected in other cases. The appellant has invoked the court's process and procedures for an illegitimate or collateral purpose, namely, as a platform for advancing his nonsensical theories. He appeared at the hearing with the support of a large retinue who appear to share or sympathise with his views. The appellant is not interested in securing justice according to law (either in relation to the convictions in question or otherwise) in accordance with the system of justice administered by the courts of this State. At the hearing on 5 July 2012 he advanced arguments in language which was often disparaging and derisory of this court and the functions it performs.

12 The grounds of appeal consist of a pronouncement of the appellant's eccentric theories about the judicial power of the Commonwealth, the *Constitution*, the right to trial by jury and the status of courts in this State. None of the grounds have any reasonable prospect of succeeding: *Samuels v The State of Western Australia* [2005] WASCA 193; (2005) 30 WAR 473. As a result, leave to appeal on all grounds is refused. The consequence is that the appeal is taken to have been dismissed.

Papers to be referred to the Attorney General

13 This appellant is wasting the time of the courts by repeatedly advancing his theories or variations of them, even though they have been dealt with and disposed of in other cases: See for example *Glew v Shire of Greenough* [2006] WASCA 260; *Glew Technologies Pty Ltd v Department of Planning and Infrastructure* [2007] WASCA 289; *Glew v The Governor of Western Australia* [2009] WASCA 123; *Glew v Frank Jasper Pty Ltd* [2010] WASCA 87; *Frank Jasper Pty Ltd v Glew [No 2]* [2010] WASC 24 and *Glew v City of Greater Geraldton* [2012] WASCA 94. Fortunately, in criminal cases this court can prevent the vexing of respondents because respondents are not required to attend on applications for leave to appeal in criminal cases. However, in civil cases he can directly vex other litigants, and by spreading his theories to a collection of supporters or sympathisers, other litigants are also vexed. Other appellants who have advanced similar theories are the appellants in *Krysiak v Hodgson* [2009] WASCA 114; *Hedley v Spivey* [2012] WASCA 116, *O'Connell v The State of Western Australia* [2012] WASCA 96 and *Williamson v Hodgson* [2010] WASC 95.

14 The court directs the registrar to refer these reasons for decision, the reasons for decision of Hall J, the papers filed by the appellant in this case in the General Division and in this court, the transcript of the hearing on 5 July 2012 and a list of other similar decisions in the General Division and in this court involving this appellant, to the Attorney General with a request that the Attorney General consider making an application under s 4 of the *Vexatious Proceedings Restriction Act 2002* (WA).