

FEDERAL MAGISTRATES COURT OF AUSTRALIA

NOAH v BAILEY

[2008] FMCA 1002

PRACTICE & PROCEDURE – Contempt of court – matters called out from the public gallery – not a party to the proceeding – warned and refused to abide the warning.

Crimes Act 1914

Morris v Crown Office, reported at [1970] 2QB 114

Applicant: LESLEY ALEXANDRA NOAH
Respondent: SCOTT MATTHEW BAILEY
File Number: BRC 933 of 2007
Judgment of: Burnett FM
Hearing date: 2 July 2008
Delivered at: Brisbane
Delivered on: 9 July 2008

REPRESENTATION

The Applicant appeared on her own behalf

Solicitors for the Respondent: Mr Henry
Australian Government Solicitor

ORDERS

- (1) That Mr Clampett be imprisoned with hard labour to 28 days on each count, each sentence to be served concurrently.

**FEDERAL MAGISTRATES
COURT OF AUSTRALIA AT
BRISBANE**

BRC 933 of 2007

LESLEY ALEXANDRA NOAH
Applicant

And

SCOTT MATTHEW BAILEY
Respondent

SENTENCING REASONS
Ex Tempore

1. In this case, the prisoner interrupted proceedings before me last Wednesday in the course of the delivery of an ex tempore judgment. The two counts of contempt relate to matters that were called out from him from the public gallery. He was not a party to the proceeding and he had no business or authority to make any comments. He was warned once and refused to abide the warning.
2. I note, generally, in relation to the commission of these particular offences that he has a generally unhealthy attitude to the Court and the authority of the Commonwealth generally. That matter is, perhaps, best reflected in his affidavit which I will mark exhibit 2. It is an affidavit which he swore and was relied upon by the respondent to the proceeding, the subject of the events giving rise to the charge.
3. I note in the affidavit that his general reference to this Court is to the Federal Magistrates Court. I note also, in the event that this could be suggested as typographical error, that he uses that word also when describing the Federal Treasurer and the Federal Commissioner

of Taxation referring to them respectively as the Fe'ral Treasurer and the Fe'ral Commissioner for Taxation.

4. There was also a number of sotto voce comments made from the gallery through the course of the day which I had allowed to pass without recognition seeking to not invite attention from the prisoner but, of course, as events showed it did not seem to be taken heed of. Finally, of course, there was the warning issued after a sotto voce comment was made, reported at p.57 of the transcript referring to ripping up the constitution, although I am not suggesting it was necessarily made by this prisoner. However he was one of the parties in the public gallery at the time. At that time I issued a general warning to all persons in the public gallery that if they did not be quiet, I would deal with them. Again, that warning went unheeded.
5. The facts, in my view, tend to suggest his conduct was intended to be contemptuous and his outbursts had the contemptuous bearing that I have construed from them. In 1970, Lord Denning said in *Morris v Crown Office* [1970] 2QB 114 at 122 a case where His Honour was dealing in that instance with a series of persons who interjected from the public gallery:

“In sentencing these young people in this way, the judge was exercising a jurisdiction which goes back for centuries. It was well described over 200 years ago by Wilmot J in an opinion which he prepared but never delivered. “It is a necessary incident”, he said, “to every Court of justice to fine and imprison for a contempt of the Court acted in the face of it “That is Rex v Almon (1965) Wilm 243, 254. The phrase “contempt in the face of the Court” has a quaint old fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power – a power instantly to imprison a person without trial – but it is a necessary power. So necessary, indeed, that until recently the judges exercised it without any appeal. There were previously no safeguards against a judge exercising his jurisdiction wrongly or

unwisely. This was remedied in the year 1960. An appeal now lies to this court: and in a suitable case, from this court to the House of Lords. With these safeguards this jurisdiction can and should be maintained.

6. I make the observations that in the context of the present structure of the Australian Courts there are the similar safeguards provided by right of appeal to the Federal Court and, in due course, by special leave to the High Court of Australia.
7. The sentencing principles which are required to be considered are set out in s.16A of the *Crimes Act*. Unfortunately, in this case, the prisoner does not wish to inform me of his personal circumstances. However, I make general observations from matters that are apparent to me. First, he is a man who is probably in his late 50s early 60s. He describes himself in his affidavit as a consultant. He appears to be of good health and sound mind and one would expect, by reference to his affidavit, not unintelligent.
8. I take into account the nature and circumstances of the offence I have earlier identified in the preamble to these reasons. I also take into account, as I say, the other matter which I think is relevant and that, of course, is what can be described as a generally unhealthy attitude to the Court revealed not only by his conduct but by his affidavit and further by his refusal to apologise, perhaps best evidenced by his plea of "not guilty" and his continued maintenance of a position that the Court has no jurisdiction to deal with him.
9. I further take into account the fact that he did not respond when appropriately warned. The contempt, in my view, is serious. It was a disruption of proceedings from the public gallery by a member of the public. As I say, it was contumelious and it demonstrated a predisposed attitude by the defendant to the authority of the Court.
10. In this case, with this sort of contempt, the sentencing options, in my view, range from a bond, putting the prisoner into recognisance to be of good behaviour for a set period through a term of imprisonment.
11. A bond would simply be inadequate when regard is had to the contumelious nature of the contempt. The outburst, in my view, is not

one premised upon some moral basis. It rather reflects an unhealthy attitude by him to society and its institutions, especially the Courts, as can be seen by his affidavit and his reference in it to it as the “Fe'ral Magistrates Court”.

12. Furthermore, a fine might even be considered as appropriate if a bond is not. However, I take into account that any fine to be appropriate in these circumstances would have to be a significant fine, one of not less than \$2000.00. In terms of the quantum of the fine, I have taken into account when assessing its value, the wasted time and resources of this Court which is a busy Court Mr Clampett by his conduct has deprived others who press for hearings their right to have their matters disposed of while it has been distracted dealing with him. Further when one has regard to the content of the affidavit sworn by Mr Clampett and, in particular, his views about the Currency Act it seems to me that there would be considerable difficulty in executing any fine and, ultimately, it seems to me that matters would not be resolved.
13. Furthermore, the imposition of a fine and, indeed, the imposition of a fine would simply serve to bear upon the Court's resources unnecessarily depriving others of access to these Courts when they too have their rights to be considered also.
14. In my view, imprisonment is the only realistic option.
15. A term of imprisonment, in my view, serves to afford an appropriate balance between first, the need to make an example to deter the conduct of like minded persons; second, to reinforce in the mind of the prisoner the need to respect the lawful institutions of society remembering that society's institutions in themselves reflect the will of the people particularly so in a democratic society such as we have in Australia; and, finally, of course, the need to punish for the contempt itself.

I certify that the preceding fifteen (15) paragraphs are a true copy of the reasons for judgment of Burnett FM

Associate: Beverley Schmidt

Date: