

COURT OF APPEAL

DAVIES JA  
THOMAS JA  
WILLIAMS J

[R v Gunter]

CA No 5839 of 2000

THE QUEEN

v.

RICHARD STEPHEN GUNTER

Appellant

BRISBANE

..DATE 11/07/2000

JUDGMENT

WILLIAMS J: This is an appeal against a decision of Justice Douglas refusing the appellant bail. The application which came before Justice Douglas on 7 June 2000 was for bail pending the hearing of an application by the present appellant for special leave to appeal to the High Court from a judgment of the Court of Appeal of 23 May 2000. In the circumstances it is necessary to refer briefly to some background facts.

In the years 1995 and 1997 the appellant was convicted of three summary offences in the Magistrates Court at Ipswich. With respect to each offence a fine was imposed and he was also ordered to pay an amount by way of costs. In each instance there was a provision that in default of paying the fine and costs the appellant should be imprisoned for a period of time.

The appellant labours under the view that the currency normally used by persons in Australia for the payment of debts is not valid legal tender. Undoubtedly that belief was behind the commission of each of the three offences which involved carrying on an activity without having paid the prescribed licensing fee associated with that activity. That belief would explain at least in part his non-payment of the fines and costs.

With respect to costs he has an additional argument, namely that the order for costs made in the Magistrates Court was contrary to a provision of Magna Carta notwithstanding the statutory power conferred on a Magistrates Court to make an order for costs in such circumstances.

When the authorities sought to invoke the default imprisonment provisions the appellant endeavoured to challenge the initial orders in superior Courts. It is sufficient to say that on 23 May 2000 the matter finally came before this Court. Prior to that he had been given bail by Justice Derrington. Clearly Justice Derrington had jurisdiction pursuant to sections 8 and 10 of the Bail Act 1980 to grant bail whilst there was an appeal pending to this Court.

The Court of Appeal on 23 May 2000 held that there was no error in the lower Court's handling of the matters involving the appellant and dismissed the appeal. At the conclusion of the Court pronouncing its reasons the applicant is recorded as saying, "I am out on bail at the moment, I want to extend the bail while I put this application into the High Court and move this up to the High Court." The President of the Court of Appeal then announced, "The application for an extension of bail is refused."

Following that, the appellant applied to Justice Douglas as Chamber Judge for bail as I have already indicated. His Honour took the view, on the authority of the decision of Justice Shepherdson in the matter of Cameron Scott Lewis, No 8255/98, judgment 9 September 1998, that he had no jurisdiction to grant bail. It is from that decision that this appeal is brought.

Justice Brennan, in *Chamberlain v. The Queen* (1983) 153 CLR 514 at 517 and 518 dealt with the jurisdiction of a Court to

grant bail pending appeal where the application was brought by a person serving a sentence after conviction. Critically he said:

"A Court of general jurisdiction at common law has no inherent jurisdiction to grant bail pending an appeal to a person serving a sentence after conviction: statutory power must be conferred if bail is to be granted to a prisoner serving a custodial sentence."

As I have already indicated, sections 8 and 10 of the Bail Act confer power on a Judge of the Supreme Court to grant bail pending an appeal to the Court of Appeal. In the words of s.8 that is a situation where a person is held in custody in connection with "a criminal proceeding to be held by that court in relation to that offence". However, it is clear in my view that the power or jurisdiction conferred by sections 8 and 10 of that Act only confer on this Court jurisdiction to grant bail whilst the criminal proceeding is pending in this Court.

The High Court has recognised that it has jurisdiction in appropriate cases to grant bail where there is an application for special leave to appeal before it. It is sufficient to refer to Chamberlain's case already cited, *Peters v. The Queen* (1996) 71 ALJR 309, a decision of Justice Dawson, and *Frugtniet v. The Queen* (1996) 71 ALJR 311, a decision of Justice Gaudron.

The appellant has, instead of applying for bail to the High Court, sought an order for bail from this Court. In my view, neither a single Judge of this Court nor the Court of Appeal has jurisdiction in the circumstances to grant bail.

Further, it is clear from the submissions addressed to the Court

today by the appellant, who appeared on his own behalf, that the matters that he wishes to agitate in the High Court on the hearing of the application for special leave relate to the validity of the present Australian currency laws and also the application of Magna Carta to the facts which I have outlined above.

All of those issues have been determined by various Courts and various Judges over a period of time adverse to the contentions of the appellant. In my view, the grounds on which the appellant wishes to obtain special leave are so devoid of merit that it is clear the application will be unsuccessful.

The fact that the applicant does not have the capacity or the willingness to accept the reasoning of the Courts and Judges over some 18 years to the effect that his argument is devoid of merit is irrelevant to the outcome of this appeal.

In giving his judgment in the Court of Appeal on 23 May 2000 Justice Pincus described the argument as nonsense and that is an accurate description of it. Even if this Court had jurisdiction the circumstances would not in my view justify the granting of bail. The appeal must be dismissed.

DAVIES JA: I agree.

THOMAS JA: I agree.

DAVIES JA: The appeal is dismissed.

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