DISTRICT COURT OF QUEENSLAND

CITATION:	*Dent v Commissioner of Police* [2022] QDC 235
PARTIES:	**TODD JAMES DENT** (appellant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO:	D125/22
DIVISON	Appellate
PROCEEDING:	Appeal against sentence
ORIGINATING COURT:	Magistrates Court Maroochydore
DELIVERED ON:	7 October 2022 (ex-tempore)
DELIVERED AT:	Maroochydore
HEARING DATE:	7 October 2022
JUDGE:	Cash DCJ
ORDERS:	**1. The appeal is allowed** **2. The sentence of the Magistrates Court of 23 August 2022 is set aside** **3. Instead, in respect of each of the offences of failing to appear, the appellant is convicted but he is not further punished**
APPEARANCES:	A Beard instructed by Legal Aid Queensland for the appellant. M Olivero instructed by the Office of the Director of Public Prosecutions for the respondent.

[1] HIS HONOUR: This is an appeal against sentence by Todd James Dent concerning the sentences imposed by Magistrate Stjernqvist at Noosa on the 23rd of August 2022 in respect of two offences of failing to appear, contrary to section 33 of the *Bail Act*. On that day the appellant appeared before Magistrate Stjernqvist in respect of those two allegations, as well as other allegations that are not presently relevant. The matter came on just after 1 pm in the afternoon. The appellant was not represented by a lawyer. He did not assist himself by making meaningless references to a "tribal equity court" and a purported section 450N of some legislation which the appellant did not identify. My own research suggests that the appellant intended that to be a reference to a provision in the

United States Code preserving the sovereign immunity of Native Americans and, if so, it was plainly irrelevant to the proceeding before the Magistrate.

[2] No doubt frustrated by the absence of meaningful response from the appellant, the Magistrate dealt with him in a manner which was, in my view, impatient. Without taking a plea from the appellant or hearing any evidence, the Magistrate declared the appellant had not shown cause as to why he failed to appear on the two occasions as alleged. There is no reference in the transcript, nor any evidence in the record, of a warrant such as might prove the offence, pursuant to section 33(3) of the *Bail Act*. That might, however, be put to one side.

[3] The Magistrate having heard the submissions of the appellant, wrongly attributed to un-named Justices of the Supreme Court, the view that those Justices were "sick and tired of this rubbish." I am aware of no such statement from the Supreme Court of this State. His Honour did correctly recall that arguments like those raised by the appellant have been described in the Court of Appeal as "gobbledy-gook."[1] There followed some discussion about the other charges faced by the appellant, and what was to happen with them. At one point in the transcript, despite it being just after 1 pm, the Magistrate remarked that it had been a long day, and that he was running out of patience.

[4] The hearing concluded with this exchange (recorded in the transcript annexed to the affidavit of Ms Clare at pages 10 and 11):

> HIS HONOUR: Okay. This is your last opportunity. You failed to appear in the court on the 3rd of June 2022; can you tell me why?
>
> DEFENDANT: Under section 450N this is not my jurisdiction, your Honour.
>
> HIS HONOUR: Likewise, on the 16th of November '21 at Noosa Heads, you failed to surrender into custody at the Noosa Magistrates Court in accordance with your undertaking entered into on the 29th of October last year; why didn't you appear, can you show cause?
>
> DEFENDANT: We appeared with a notice of special appearance.
>
> HIS HONOUR: There are two contempt charges. On each charge you're convicted and sentenced to one month's imprisonment. They're cumulative with each other; that's a total period today of two months imprisonment.

[5] Soon after, and it is not clear if this was in the presence of the appellant or not, the police prosecutor and the Magistrate made joking reference to the appellant's reliance upon "section 450".

[6] No reasons at all were given by the Magistrate as to why he imposed the sentence he did. Crucially for this appeal, there was no mention of the principles contained in section 9(2)(a) of the *Penalties and Sentences Act* that imprisonment is regarded as a sentence of last resort, and that orders that permit an offender to remain in the community are to be preferred. As may be seen, the order pronounced by the Magistrate was for cumulative sentences of one month each. No mention was made by his Honour of any parole release

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1 *Bradley v The Crown* [2020] QCA 252.

date. Yet the bench charge sheet is endorsed with a parole release date of 20 September 2022, something which is repeated in the appellant's criminal history. The record of the proceeding is entirely opaque as to when and where that order for release on parole was made. It does not appear to have been an order made in open court in the presence of the appellant.

[7] The appellant filed a notice of appeal on 14 September 2022, and I admitted him to bail pending the determination of this appeal two days later. By the time the applicant was admitted to bail, he had served 24 days in custody. The appeal came on for hearing today with the respondent correctly conceding that the Magistrate erred in the sentence hearing by not having regard to section 9(2)(a). It is also clear to me that the Magistrate also erred by providing no reasons for his decision.

[8] The appellant argued the sentence was in any event excessive. He is right in that regard, too. The appellant was 43 years of age at the time. He had a limited criminal history, but it was one that, perhaps unsurprisingly, demonstrated opposition to authority. Until this sentence though, the penalties that had been imposed upon the appellant consisted of fines or orders that he be of good behaviour. He had, as well, a substantial traffic record which is also consistent with a view that the appellant is someone who opposes authority. The appellant had no history of failing to appear contrary to the Bail Act. In those circumstances, and having regard to the comparable authorities referred to by the appellant, a sentence of two months' imprisonment with a requirement to serve a month in prison was excessive in the circumstances.

[9] For these reasons the sentence imposed by the Magistrate for each of the offences of failing to appear must be set aside. But for the fact that the appellant has already served 24 days imprisonment, consideration might be given to the imposition of a fine. This, in my view, would have been the appropriate sentence at first instance, but the appellant ought not to be further punished which would be the result of a financial penalty being imposed now.

[10] For these reasons the orders are as follows:

1. The appeal is allowed.
2. The sentence of the Magistrates Court of 23 August 2022 is set aside.
3. Instead, in respect of each of the offences of failing to appear, the appellant is convicted but he is not further punished.

[11] It is appropriate to make some further observations about the conduct of the proceeding at first instance. The appellant was no doubt a difficult, unresponsive, and even obstructive litigant. Nonetheless, judicial officers administering the criminal laws of this State are obliged to "do right by all manner of people". Sometimes this requires patience and forbearance. Always it requires the judicial officer to adhere closely to the requirements of our Statute laws. Impatience and intemperance will rarely improve a difficult hearing, and they risk, as was the outcome here, unnecessary error. Had the Magistrate in this case taken the time to calmly consider the matter, to apply the requirements of the legislation and the common law, and to meet his obligation to give reasons for the decision that was reached, the appellant may have been spared 24 days

in prison, and the community the expense of correcting the Magistrate's error. It is to be hoped conduct of proceedings of this kind is not commonly to be seen in the future.