

Supreme Court Notes

Sentencing – Domestic Violence Act *Ellis v Maley*

JA 38 and 39/1995.

Judgment of Angel J delivered 25/5/96

The appellant pleaded guilty and was convicted on six counts of breaching a Domestic Violence Order. The appellant was sentenced to a total of 49 days imprisonment with hard labour.

The sentence was challenged on the grounds that it was manifestly excessive. The grounds of appeal were that the sentencing Magistrate did not take due notice of (1) the appellant's pleas of guilty, (2) the appellant's personal circumstances, (3) the circumstances of the offence and (4) the offence and its relationship pursuant to section 10 of the *Domestic Violence Act*.

His Honour held that for the Supreme Court to interfere with the sentencing Magistrate's discretion it must be shown that such discretion was improperly exercised. In relation to the respective grounds of appeal His Honour said:

(1) a plea of guilty is a mitigating factor if it is accepted as evidence of

remorse or acknowledgment of wrongdoing, but the learned sentencing Magistrate was clearly not convinced that there was evidence of remorse;

(2) there was evidence that the sentencing Magistrate did turn his mind to the personal circumstances of the accused, including his good work record and the fact that he was 'distressed' and a 'misguided youth';

(3) the learned Magistrate clearly turned his mind to the circumstances, including that no physical violence was involved; that some of the offences had taken place whilst on bail and the appellant's prospects for rehabilitation;

(4) that it was within the Magistrate's power to order that certain sentences be served cumulatively, others concurrently and the net sentence had not been shown to be manifestly excessive.

The appeal was dismissed.
E Morris for the appellant
M Fox for the respondent

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Missing Will

The Public Trustee of South Australia would appreciate information concerning a will of:

KEITH JOSEPH CLARKE

also known as

KEVIN EMILE BLAIZE,

late of

8 Wright Avenue

Northfield

South Australia

retired taxi driver, who died on the 23rd March 1994. The Public Trustee holds a will dated 14 June 1983 but the deceased may have made a later will.

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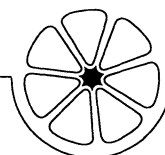
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