

Northern Territory of Australia V Dean

Supreme Court No. LA16/05 (20115735)

Judgment of Thomas J delivered 10 October 2005.

CIVIL LAW – CRIMES (VICTIMS ASSISTANCE) ACT
– BEHAVIOUR OF VICTIM



Mark Hunter, Barrister

The respondent to this appeal was on 12 October 2000 approached by Dave McKinnon in a bar, and assaulted without warning. McKinnon kicked the respondent and struck him with a bar stool. McKinnon received in the Court of Summary Jurisdiction a suspended sentence of imprisonment for this aggravated assault.

In the subsequent Local Court proceeding, the learned magistrate found that, on 10 October 2000, the respondent had "...drunkenly taken advantage of Mr McKinnon's drunken girlfriend (J)."

The respondent had been charged with raping J on 10 October 2000, but he was acquitted at trial in 2002. He applied for an assistance certificate, pursuant to s 5 of the Crimes (Victims Assistance) Act. The Territory did not in the Local Court seek to cross-examine the respondent about the circumstances surrounding his first and only sexual activity with J; she was a long standing friend.

The Territory argued that the victim's conduct contributed to the injury (s 10 (2) of the Act) but, in the exercise of his discretion, Mr Wallace SM declined to refuse or reduce the award of assistance. The learned magistrate determined that s 10 "...entails a fair degree of proximity, especially temporal proximity...the necessary proximity is lacking in the present case."

The primary ground of appeal was the Territory's contention that Mr Wallace SM had failed to apply a "common-sense test of causation" – *Lanyon v NTA* (2002) 166 FLR 189, per Bailey J at 194.

HELD – Appeal dismissed.

Thomas J found that Mr Wallace SM did not misdirect himself by determining that the only conduct of the respondent relevant to the s 10 discretion was conduct immediately temporally proximate to the assault upon him by McKinnon. Furthermore, the s 10 discretion had been judicially exercised by the magistrate.

Justice Thomas observed that an accused's acquittal

of an alleged crime charge does not create an issue estoppel in civil proceedings. But her Honour agreed with the magistrate that the state of the evidence made it appropriate for the Local Court to decline an attempt to determine whether, on the balance of probabilities, the respondent's conduct had been criminal in nature.

APPEARANCES

Appellant – Clift / Halfpennys

Respondent – John McCormack

COMMENTARY

In his judgment, Mr Wallace SM opined that a clear lack of proximity would also exist between the conduct of a victim and his injury (or death) if:

- (a) a paedophile is bashed in prison after being convicted; or
- (b) an offender is speared as "payback" according to aboriginal custom or law.

Opening of the Legal Year 2006

DARWIN:

Monday 30 January

ALICE SPRINGS:

Wednesday 1 February

This year's guest speaker will be retiring Director of Public Prosecutions Mr Rex Wild QC.

Further information about the ceremonies marking the Opening of the Legal Year will be available shortly.