SUPREME COURT OF QUEENSLAND

[2002] QSC 053
File No 10052 of 2001

BETWEEN:

ANTHONY ROY WOLFE

Applicant

AND:

NATASHA LAUREN PRICE

First Respondent

AND:

MR T G BRADSHAW (Magistrate)

Second Respondent

MOYNIHAN J – REASONS FOR JUDGMENT

DELIVERED ON: 15 March 2002

HEARING DATE: 13 February 2002

ORDER: **Application for Review Dismissed**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – where applicant seeks review of decision under section 20 *Judicial Review Act* – whether section 4.1.5 of *Integrated Planning Act* impliedly repeals section 505 (12) of the *Environmental Protection Act* – whether the Planning and Environment Court has exclusive jurisdiction in respect of contravention of its orders – whether orders of Planning and Environment Court are res judicata jurisdiction – whether orders are breach of double jeopardy rule – whether no reasonable jury properly instructed could convict the applicant.

ADMINISTRATIVE LAW – JUDICIAL REVIEW - where applicant seeks review of conduct relating to making a decision under section 21 *Judicial Review Act* – whether there is apprehended bias.

COUNSEL: Mr D.G. Eliades for the applicant

Mr P. McMurdo QC and Russell Byrnes for the first respondent

Mr J. Kooreman for the second respondent

SOLICITORS: Andrew P. Abaza for the applicant

Environmental Protection Agency for the first respondent

Crown Law Solicitors for the second respondent

[1] The applicant seeks the review pursuant to the *Judicial Review Act* 1991 of the second respondent's decision to commit the applicant for trial in the District Court at Rockhampton on three charges of contravening an order of the Planning and Environment Court made pursuant to s 505 of the *Environmental Protection Act* 1994. The second respondent, the magistrate, appeared to abide the order of the Court and took no part in the appeal.

[2] The applicant seeks review of the decision under s 20 of the *Judicial Review Act* and of conduct relating to the making of the decision pursuant to s 21 of the Act. The later relates to considerations of apprehended bias.

[3] As I understand the applicant's submissions its case for review under s 20 is advanced on the following basis. First s 4.1.5 of the *Integrated Planning Act* impliedly repealed s 505(12) of the *Environmental Protection Act* 1994 and the Planning and Environment Court has exclusive jurisdiction in respect of contravention of its orders. Secondly, the orders of the Planning and Environment Court for breach of which the applicant is committed were disposed of by that court on 3 August 2001 with the consequence that the matters are either res judicata jurisdiction or the committal is a breach of the double jeopardy rule. Thirdly, it is contented that no reasonable jury properly instructed could convict the applicant.

[4] The Planning and Environment Court is a statutory court of record continued in existence by s 4.1.1 of the *Integrated Planning Act* when it repealed the *Local Government (Planning and Environment) Act* 1990 when it came into force on 30 March 1998.

[5] Section 4.1.5 of the *Integrated Planning Act* provides in respect of the Planning and Environment Court:

> "(1) A judge of the court has the same power to punish a person for contempt of the court as the judge has to punish a person for contempt of a District Court.
>
> (2) The District Courts Act 1967, s 129, applies in relation to the court in the same way as it applies in relation to a District Court.
>
> (3) If a person, at any time, contravenes an order of the court, the person is also taken to be in contempt of the court.
>
> (4) If a person is taken to be in contempt of the court under subsection (3), the District Courts Act 1967, s 129(4) applies in relation to the contravention as if the person were an offender, and as if the expression `12 months' were `2 years' and the expression `84 penalty units' were `3,000 penalty units'."

[6] Prior to s 4.1.5 coming into force the Planning and Environment Court had power under ss 7.5(1) and 7.7(2) of the *Local Government (Planning and Environment) Act* to deal with contempt in the face of the court but lacked power to enforce its orders by way of contempt of proceedings; see *Council of the Shire of Moreton v O'Neill* [1997] QPELR 193

[7] Section 505(12) of the *Environmental Protection Act* relevantly provides:

> "(1) A proceeding may be brought in the Court for an order to remedy or restrain an offence against this Act, or a threatened or anticipated offence against this Act.
>
> . . .
>
> (11) The Court's power under this section is in addition to its other powers.
>
> (12) A person who contravenes an order commits an offence against this Act.
>
> Maximum penalty for subsection(12) – 3 000 penalty units or 2 years imprisonment."

[8] Absent express words for a later provision to repeal an early requires that the implication "necessarily follows". This will be the case if the two provisions are inconsistent or repugnant, that they cannot stand together; *Goodwin v Phillips* (1908) 7 CLR 1 per Barton J at 10; *Saraswati v R* (1991) 100 ALR 193 per Gaudron J at 204.

[9] The apparent purpose of s 4.1.5 was to extend the contempt powers of a judge of the Land Planning and Environment Court to include breach of the orders made by the Court.

[10] The fact that an act or omission can be dealt with under different statutory provisions does not mean that the provisions are in conflict to the extent that the implied repeal of the earlier provision is necessarily implied. Section 45 of the *Acts Interpretation Acts* provides that an offender may be prosecuted under any of two or more possible laws but can only be punished once. Section 16 of the *Criminal Code* is to similar effect. See also *R v Viers* [1983] Qd R 1 as to the effect of s 17 of the Code and the oppressive use of the power to prosecute events if the situation was not caught by the Code provisions.

[11] Moreover, the use in s 4.1.5(3) of a person "also" being taken to be in contempt of court by the contravention of an order and the provision in subs (4) that s 129(4) of the *District Court's Act* apply as if the person "were an offender" support the view that the provisions of the *Integrated Planning Act* contemplates the separate existence of offences although it permitted the Planning and Environment Court to deal with contraventions of its orders as a civil contempt.

[12] It follows in my view that s 4.1.5 of the *Integrated Planning Act* did not completely replace s 505(12) of the *Environmental Protection Act*. I turn now to the effect of the orders of 3 August 2001.

[13] The application was committed for breach of orders of 8 March 2001. These were directed at prohibiting the carrying on of the activity of "regulated waste storage" on specified property in contravention of the *Environmental Protection Act*.

[14] The orders made on 3 August 2001 authorised officers of the environmental protection agency to enter onto specified property, remove and dispose of "regulated waste" found there for the purpose of minimising environmental harm. The orders of 3 August were not in substitution for or a variation of those made on 8 May and do not bear on the applicant's criminal responsibility for breach of those orders even if it is assumed they are directed to dealing with the consequences of breach of those orders.

[15] In so far as the submission that no admissible evidence could be led of contravention of the orders of 8 May relied on the implied repeal argument and the argument that they had been dealt with on 3 August I have dealt with them.

[16] For the reasons stated by Ambrose J in *Chen & Anor v Diggle* (unreported, 4650 of 1999 judgement 6 August 1999) it is inappropriate to deal with issues as to the sufficiency of evidence and the like here; see also *Lamb v Moss* (1983) 45 ALR 533.

[17] The allegations of apprehended bias are founded on the magistrate having issued warrants under the *Environmental Protection Act* on the application of the first respondent prior to the committal proceedings. These related to premises other than those the subject of the orders of the Planning and Environment Court on 8 May and 3 August. The property in question was apparently owned by the applicant's mother.

[18] This issue came to light during the committal proceedings, although it appears that at least one of the warrants was in the applicant's solicitor's possession prior to that. No objection was taken at the time to the magistrate conducting the committal proceedings.

[19] The warrants were issued pursuant to s 456 of the *Environmental Protection Act* which relevantly requires the person issuing a warrant to be satisfied that:

> "…there are reasonable grounds for suspecting–
>
> (a) there is a particular thing or activity ("evidence") that may provide evidence of the commission of an offence against this act; . . .".

[20] The facts providing reasonable grounds for suspicion may be insufficient to ground a reasonable belief in respect of the relevant matter but nevertheless provided a basis for the suspicion. On the other hand a committing magistrate is to determine whether the evidence is sufficient for a reasonable jury properly instructed could return a verdict of guilty. This does not involve and evaluation of the creditability of witnesses. Put shortly there are different tests which are not mutually exclusive. Material, for example, founding a reasonable suspicion may be inadequate to found a verdict.

[21] It is also pertinent to mention that committal proceedings are an administrative function although the hearing must be conducted judicially. Given the considerations I have canvassed, in my view the fact that the magistrate issued the warrants in question does not give rise to a reasonable apprehension of bias.

[22] In any event the point ought to have been taken when it arose and not to do evidence waiver of the objection and absent some compelling explanation should be treated as such; *Vakuata v Kelly* (1989) 167 CLR 568 at 572.

[23] The situation being as I have found it is not oppressive to pursue the prosecution of the offences for which the respondent was committed. The application for judicial review should be dismissed.