

SUPREME COURT OF QUEENSLAND

CITATION: *R v Tootell; Ex parte Attorney-General (Qld)* [2013] QCA 287

PARTIES: **R**
v
TOOTELL, Trent John
(respondent)
EX PARTE ATTORNEY-GENERAL OF QUEENSLAND
(appellant)

FILE NO/S: CA No 161 of 2012
DC No 30 of 2012

DIVISION: Court of Appeal

PROCEEDING: Re-opening of Proceedings s 188 *Penalties and Sentences Act* 1992 (Qld)

ORIGINATING COURT: District Court at Maryborough

DELIVERED ON: 2 October 2013

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Holmes and Fraser JJA and Henry J
Judgment of the Court

ORDER: **Order 3 is amended to read as follows:**

“**On Count 1 the respondent is sentenced to two months imprisonment and 12 months probation with the requirements set out in s 93 of the *Penalties and Sentences Act* 1992.**”

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – OTHER MATTERS – where this Court allowed the Attorney-General’s appeal against sentence – where the Court ordered a period of two months imprisonment, followed by 12 months probation – where s 92(2) of the *Penalties and Sentences Act* 1992 requires that the period of a probation order start on the day the order is made – where the court has re-opened proceedings under s 188(1)(a) of the Act to re-sentence so that the probation period runs from the date of the order

Penalties and Sentences Act 1992 (Qld), s 92(2), s 188(1)(a)
R v Tootell; ex parte A-G (Qld) [2012] QCA 273, related

COUNSEL: No appearance for the appellant, the appellant's submissions were heard on the papers
No appearance for the respondent, the respondent's submissions were heard on the papers

SOLICITORS: Director of Public Prosecutions (Queensland) for the appellant
Suthers Lawyers for the respondent

- [1] **THE COURT:** On 28 September 2012, this court allowed the Attorney-General's appeal against sentence.¹ The sentences imposed below, which were probation combined with a wholly suspended period of imprisonment, were set aside and in their place were substituted, by orders 3 and 4 of the court's order, the following:

“3. On Count 1 the respondent is sentenced to two months imprisonment to be followed by 12 months probation with the requirements set out in s 93 of the *Penalties and Sentences Act 1992*.

4. On each of Counts 2 and 3 the respondent is sentenced to 14 months imprisonment to be suspended after he has served two months with an operational period of 20 months.”

- [2] It has been brought to the court's attention that order 3 does not conform with s 92(2) of the *Penalties and Sentences Act 1992*, which requires that the period of a probation order start on the day the order is made; the order, as presently formulated, would postpone the commencement of the probation to a date two months after the making of the order. Since that sentence is not in accordance with s 92(2), this court has re-opened the proceeding pursuant to s 188(1)(a) of the *Penalties and Sentences Act 1992* in order to re-sentence in such a way that probation commences as at the date of the order.

- [3] Accordingly, order 3 is amended to read as follows:

“On Count 1 the respondent is sentenced to two months imprisonment and 12 months probation with the requirements set out in s 93 of the *Penalties and Sentences Act 1992*.”

¹ *R v Tootell; ex parte A-G (Qld)* [2012] QCA 273.