

READ

V.

THE QUEEN

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Friday, 3rd September 1971

READ

v.

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ORDER

Application for leave to appeal refused.

READ

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JUDGMENT

BARWICK C.J.

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John Edward Read, Junior, on 4th November 1970 was sentenced by the Supreme Court of the Northern Territory to a term of three years imprisonment. A notice of motion for leave to appeal against this sentence was lodged in the Melbourne Registry of the Court on 25th November 1970. However nothing was done to bring the matter before the Court until the applicant wrote to the Court through the Crown Law Officer at Darwin on 6th February 1971 as follows:

"I John Edward Read Jnr. of the above address, am submitting this letter as an appeal by letter. I was sentenced to three years imprisonment for break enter and stealing, by his Honour Justice Joske in the last Supreme Court Sittings of November 1970. I have tried several times to get an appeal. But find I am endlessly writing letters. I won't stop trying to have an appeal heard. I just seem to get a legal runaround! I know that these things take time, but I have had to take this direct approach. I also admit I am under the Psychiatrist Dr. Cowdy of the Darwin Hospital. I am appealing on the severity of the sentence. My reason as follows. After losing my position at Gove that I had waiting to transfer from Davies Contractor to Nabalco. I broke entered and stole \$5,780.00 dollars worth of gemstones from the Siesta Souvenir Shop. Four days afterwards I of my own free will after a message was left for me to go and enquire at the Police Station. I did this of my own free will. I was not accompanied by a policeman. I walked in of my own free will. I was asked if I had taken the stones and I stated I had and then directed the police with myself and

returned everything. But was told later \$400.00 worth was missing. Yet I don't drink I don't get around and act like a lout I am usually quite unless provoked. And I don't associate with criminals apart from in here at Prison. I work for a living outside of here I have never gained from stealing except a record. Yet I find myself with a sentence worse than others get for Armed Robbery Assault. Indecent assault on Man Woman or Child. Rape and manslaughter and some for the third time on manslaughter! It was stated I was just released from prison prior to coming into this state and committing this offence. That is not true as I worked for Bell Bros. in West Aust. and Flour of Australia (Utah Cars) at Dampier. Worked in Darwin for Johnston Motors. Then to Gove! Where I remained for 10 months. My money was sent in the form of gifts to people whom I think a lot of. I am not proud of my past in any way at all. But maybe Dr. Cowdy may help me there!! As I am under his treatment here in prison. Another example similar to my own that is a case much the same is Barton's Pharmacy Robbery Smith Street Darwin heard at the same sittings by Justice Joske \$6,000.00 to \$8,000.00 of watches stolen. People who did it caught breaking and entering M.M.A. (Ansett Office) at Kunanurra W.A. Extradited to Darwin Northern Territory. Yet \$2,000.00 to \$4,000.00 still unrecovered by Police. His Honour Justice Joske found one guilty of stealing but gave him a bond. Yet he was not even under his own name found out later and an abscontee of bail in N.S.W. The second was discharged. He was already on a bond from Sydney. The third for receiving (2 years). Also another an employee of N.T.A. a sum of money three times the amount of mine, was sentenced to 18 months at Alice Springs. I am not trying to whitewash myself. But it was at Det. Constable Pope that I got in touch with a Psychiatrist when I was arrested inside the Bennett St. Police Station. This was done. His Honour Justice Joske said that it looked as if I was about to embark on a series of crimes that happened between 1947 and 1955. I ask you Your Honours does it look like a real thief, that voluntarily returns everything and yet I have never gained anything out of my crime all petty until now! I do also have a CONSCIENCE! And can His Honour Justice Joske foresee the future I do also have a bit of sence and I have never used violence except in self defence. My counsel stated I had no grounds for an appeal at all. But I think I have! It also costs \$5,200 a year to keep me here in Prison without hope of Parole or Probation as in

other States. And I don't pay in tax. Even with a \$2,000.00 fine and time to pay it and make restitution to the people of the \$400.00 dollars. I understand I must also forward \$3.00 I will ask the Acting Gaoler to make application for the money to also be forwarded on for the appeal. Mr. C. Barwick of the taxation can substantiate my claim, at the earnings of mine at the Taxation Dept. Darwin.

So I ask Your Honours to consider my case, and also His Honour Justice Joske would not even back date my sentence of the three months on remand here in Prison before being sentenced".

We have treated this letter, transmitted to the Principal Registrar by the Department of the Attorney-General, as a written argument in support of the application for leave by the applicant in person. On the applicant being so informed he sent to the Principal Registrar a further letter enclosing a notice of assessment of income tax in respect of the year ended 30th June 1970. In this letter he claims that he had been working for a living and had not been earning it by stealing. He also admits a conviction, presumably for theft, in New Caledonia for which he was imprisoned for one month and "not permitted to enter New Caledonia" for five years. He also refers to his consultations with psychiatrists in the Yatala gaol where he is presently lodged, saying that he does not claim to be "over whatever ails me". He says he intends "to keep in touch with a psychiatrist long after this is over". He also calls attention to the fact that the sentence was not ordered to run from the date of his arrest, saying that he was in prison on remand for a period of three months.

The Court directed the Principal Registrar to obtain a transcript of the proceedings in the Supreme Court and this is now to hand. I have fully perused that transcript.

The charge to which the applicant pleaded guilty was that he broke and entered a souvenir shop in Darwin and there stole rings, ornaments and gemstones to a value of about \$5,700. He was represented at the trial by a solicitor.

It would seem that the applicant had been living in close proximity to the souvenir shop and had become friendly with its proprietors. They had from time to time accepted his assistance in the shop. He was present in the shop on the Saturday preceding the day of the theft which was a public holiday, namely 3rd August. According to his own statement to the police he broke into the shop in the early hours of the morning of that day, took the goods, wrapped them in a towel, and left by the aperture he had made by which to gain entry to the shop. He hid the goods and later that day removed them and buried them in a plastic bag on Mindil Beach. He later took the police to that spot and the goods with the exception of two rings were recovered. Two rings from the shop were found on the morning of the theft in a lane behind the shop.

The applicant has a considerable record for stealing spread over a period of twenty-three years, though he was only 37 years of age at the time of the present conviction. There was a break of 14 years in the record, nothing being recorded in this country between 1955 and 1970. But there have been two convictions for stealing since then. The date of the conviction in New Caledonia does not appear. The applicant worked over the

past five years in various occupations in Northern Australia and in Darwin, and apparently for a short time in New Zealand as a fisherman on his own account.

A psychiatrist who is a Government Medical Officer visited the applicant in gaol during the period of his remand. He gave evidence to the effect that, according to the account of himself given by the applicant, he suffered periods of depression, which in the psychiatrist's opinion, could account for his actions in stealing as he had. The solicitor appearing for the applicant pressed the trial judge to release the applicant on a bond conditional on amongst other things his remaining in Darwin and his submission to psychiatric treatment. However, the trial judge saw practical difficulties in the way of enforcing such conditions and, in any event, having regard to the applicant's record, the serious nature of the theft with which the applicant was charged, and the availability of psychiatric attention in Yatala Gaol, was not prepared to place the applicant on a conditional bond.

In sentencing the applicant, the trial judge said:

"Your counsel has made a very moving address on your behalf, but the crime that you have committed is a serious crime and it amounted to stealing, breaking and entering and stealing goods over \$5000 in value. You have got a very lengthy list of convictions, unfortunately, and while it is true that there is a break of a number of years, you have again resumed - and this is not the first time - this criminal course of conduct. And under those two circumstances, that you have committed a very serious crime, and that you have got a very bad record, and as it is my duty to protect the community, I have to send you to gaol, and it has to be a substantial sentence.

In gaol you can get the benefit of the doctor's services and I trust that you will make yourself available to the doctor.

The sentence of the Court is: that you be imprisoned for a period of three years and I give a direction that, in my opinion, the services of Doctor Cowdy should be made available for this accused's benefit".

I have now fully considered the available material including what has been written by the applicant in his letters to the Registrar. I can find no ground upon which this Court should give leave to the applicant to appeal against the sentence imposed upon him. The trial judge considered all that was put before him and made no error of law in the approach which he made to sentencing the applicant. The term of imprisonment to which the trial judge sentenced him was no doubt considerable but in the circumstances of the case the length of that term does not warrant this Court interfering with the trial judge's exercise of discretion in imposing the sentence. In my opinion, leave to appeal should be refused.

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JUDGMENT

McTIERNAN J.

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I agree in the judgment of the Chief
Justice.

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JUDGMENT

MENZIES J.

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I agree that leave to appeal should be refused.

I do so for the reasons stated by the Chief Justice.