

THE REPUBLIC

V

SLADE BENJAMIN

JUDGE: Eames, C.J
DATE OF HEARING: 6 March 2012
DATE OF JUDGMENT: 6 March 2012
CASE MAY BE CITED AS: Republic v Slade Benjamin
MEDIUM NEUTRAL
CITATION: [2012] NRSC 1

Catchwords:

Appeal - Criminal law - Appellant charged with breach of probation upon arrest for offence of threatening violence - Breaching offence not yet heard and determined - Lay Magistrates hear charge over objection by appellant that he wishes to contest the charge of threatening violence - Lay Magistrates convict appellant for breach of probation without a determination of the alleged breaching offence - Appeal allowed - Matters referred to Resident Magistrate for hearings.

APPEARANCES:

For the Appellant

Mr Knox Tolenoa (Pleader)

For the Respondent

Mr Wilisoni Kurisaqila DPP

CHIEF JUSTICE

- 1 The appellant appeared before the Resident Magistrate on 1 June 2011 and pleaded guilty to one count of assault and one count of wilful damage of property. The assault was on his wife, whom he punched in the face in a drunken rage. The learned Resident Magistrate placed the appellant on probation for one year. He was also fined \$50.00, and given 28 days to pay, on the unlawful damage count.
- 2 On 21 December 2011, the appellant was arrested and charged with threatening violence against his wife, contrary to s.75 of the *Queensland Criminal Code 1899*.
- 3 On 22 December 2011, he was charged with breach of his probation order under s.15(1) of the *Criminal Justice Act 1999*. The Chief Probation Officer who brought the charge alleged that the appellant breached s.11(f) of the *Criminal Justice Act 1999*, which required a probationer to keep the peace, be of good behaviour and commit no offence during the period of probation.
- 4 On the charge of breach of probation the appellant appeared before three Lay Magistrates. They found him guilty of breach of probation and sentenced him to 3 months' imprisonment. He was further sentenced to a cumulative one months imprisonment for his failure to pay the fine that had been imposed.
- 5 It is against those sentences that Slade Benjamin now appeals.
- 6 In his notice of appeal he alleges that he was denied natural justice by being denied legal counsel and being convicted of breach of probation when no court had yet adjudicated on the charge of threatening violence, which conduct was the necessary foundation for the claim that he had breached probation.
- 7 The Lay Magistrates provided written reasons for the decision. They recorded that the appellant had asked them to adjourn the hearing of the breach of probation charge so as to have the charge of threatening violence and also the charge of breach of probation dealt with by the Resident Magistrate.

8 The Magistrates recorded in their reasons:

“Bench discuss about the defendant and also for the breach of Sentence conditions then came to an agreement that the defendant therefore to be imprisoned for breach of bail (sic); and, as for the new charge layed (sic), will from continued from today”.

9 As is apparent from that narrative, the appellant was convicted and sentenced for breach of probation by virtue of their accepting the untested allegation that he engaged in the conduct constituting the offence of threatening violence, which conduct had not yet come before a court for determination.

10 Given that conclusion, it unnecessary to decide whether he was also denied by the Lay Magistrates his constitutional right to defend himself against a charge and employ counsel to do so. The conviction and sentences imposed by the Lay Magistrates cannot stand. The Director of Public Prosecutions did not contend otherwise.

11 The appeals are allowed and the conviction and sentences are quashed.

12 I direct that the charge of threatening violence and the charge of breach of probation be heard, in that order, by the Resident Magistrate.

6 March 2012
Geoffrey M Eames AM QC
Chief Justice