

McDonagh v Hales

27 August 2003

Martin CJ, Thomas & Riley JJ

Ex tempore judgment

The appellant was convicted in the Court of Summary Jurisdiction on 25 January 1999 for breaching a restraining order made by the Court of Summary Jurisdiction under the *Domestic Violence Act* and was fined \$250.00 plus victims levy of \$20.00 in default 5 days imprisonment. He appealed to the Supreme Court against both conviction and fine. The appellant failed to appear on the day the appeal was listed for hearing (21 October 2002) and the appeal was struck out for want of prosecution.

The appellant then appealed to the Court of Appeal against the decision of the Supreme Court striking out his appeal. That appeal was heard on 27 August 2003. The appellant appeared for himself as he had in the Court of Summary Jurisdiction. The appeal against conviction was dismissed but the appeal against sentence was allowed on the basis that the appellant had been in custody for a period of three days following his arrest. The fact of the appellant's incarceration had not been made clear to the sentencing magistrate and accordingly was not taken into account by him when sentencing the appellant as it should have been. The respondent conceded this error had vitiated the sentencing process. The Court of Appeal remitted the matter to a single judge of the Supreme Court for re-sentencing. On 28 August 2003, the Supreme Court resented the appellant by imposing a conviction but refrained from imposing any further penalty. The appellant again appealed to the Court of Appeal against the severity of this sentencing order. That appeal was heard and determined on 18 March 2004 and is the subject of a separate report.