

Serra v R

12 May, 3 June 2004
Mildren, Bailey & Riley JJ
[2004] NTCCA 3

In 1996 the appellant was sentenced to 9 years imprisonment for robbery committed with circumstances of aggravation. A non-parole period of 4½ years was fixed. He was released to parole in August 2000. In January 2001 and in May 2001 the appellant committed a number of unlawful entries and associated stealings. In September 2001, pursuant to s.5(6) of the *Parole of Prisoners Act*, the Chairman of the Parole Board revoked the parole order and a warrant was issued for the appellant's commitment to serve that part of the term of imprisonment that he had not served when released to parole. The appellant pleaded guilty to the fresh offences in January and August 2003, and was sentenced to a total effective sentence of 7½ years imprisonment. The sentencing judge declined to fix a non-parole period in respect of this sentence. The imposition of the sentence attracted the operation of s.59 of the *Sentencing Act*. As a consequence the applicant was required to serve firstly, the sentence of 7½ years imprisonment and secondly, the unserved part of the sentence of 9 years for the robbery.

Section 5(2)(p) of the *Sentencing Act* provides that in sentencing an offender, a court shall have regard to sentences that the offender is liable to serve because of the revocation of orders made under any Act for contraventions of conditions by the offender. As neither party drew the sentencing judge's attention to s.5(2)(p), there was no ventilation of its effect upon the sentence to be imposed. The sentencing judge proceeded on the basis that the sentence that the appellant was liable to serve because of the revocation of the parole order was irrelevant.

At the hearing of the appeal, the respondent conceded that the sentencing judge was led into error and that the sentence was thereby vitiated.

In a unanimous judgment the court held that -

- the respondent's concession was correctly made
- the manner in which the sentencing judge was misled resulted in him imposing a sentence which, when considered with the balance of the sentence that the appellant was liable to serve because of the revocation of parole orders (4½ years), was too severe
- given the appellant's extensive criminal history which included numerous breaches of court orders and the commission of offences whilst on parole and on bail, the sentencing judge was correct in declining to fix a non-parole period.

The court resentenced the appellant to a total effective sentence of imprisonment of 6 years imprisonment. The court declined to fix a non-parole period.