

Tudor-Stack v Hill

26 August 2003, 12 September 2003
Martin CJ, Thomas & Riley JJ
[2003] NTCA 15

The respondent pleaded not guilty in the Court of Summary Jurisdiction to a charge of breaching a restraining order made under the *Domestic Violence Act*. At the hearing, although the magistrate found that there had been a breach of the order, he found that the breach had been induced by the representations of the beneficiary of the order. In those circumstances he found himself to be bound by the decision of the Supreme Court in *Palmer v Pryce* [2000] NTSC 7 in which it was held that a beneficiary of the order could legally authorise a breach of the order thereby providing the respondent with a defence to the charge. The respondent was therefore found not guilty of the offence.

The prosecution appealed the decision to the Supreme Court on the basis that *Palmer v Pryce* had been wrongly decided. Given that *Palmer v Pryce* was a decision of a single judge of the Supreme Court, the matter was referred to the Full Court of the Supreme Court for determination pursuant to s.21 of the *Supreme Court Act*.

In the Full Court the appellant argued that a beneficiary of a domestic violence restraining order could not authorise, within the meaning of that term in s.26(1)(d) of the *Criminal Code*, a breach of the order such as to provide the person breaching the order with a defence to the charge. The Court unanimously decided that the beneficiary of a domestic violence restraining order cannot authorise, permit or licence its breach. Only the court can vary the terms of the order. In addition, a mistaken belief that the beneficiary had varied the order would not avail the offender, as s.32 of the *Criminal Code* has no application to a breach of a restraining order.

The Court allowed the appeal and overruled the decision in *Palmer v Pryce*.