

Braedon v R

**19 April 2005
(BR) Martin CJ, Thomas & Riley JJ
Extempore**

The appellant was found guilty by an Alice Springs Supreme Court jury of one count of having sexual intercourse with another person without consent. He also pleaded guilty to one count of unlawful entry of a building with the circumstances of aggravation that (i) he intended to steal and (ii) the unlawful entry occurred at night time. He was sentenced to imprisonment for 4½ years for the rape and 12 months imprisonment for the unlawful entry. It was ordered that the sentences be served concurrently. It was ordered that the sentences be suspended after 12 months. An operational period of 3 years and 6 months from the date of release was fixed.

The appellant applied to the Court of Criminal Appeal for leave to appeal against the conviction for rape on the grounds that the judge misdirected the jury as to the mental element in the offence of rape and as to the defence of mistaken belief as to the victim's consent. Leave to appeal was granted on 10 October 2001.

The hearing of the appeal was deferred until such time as the High Court of Australia delivered its decision in the matter of *DPP (NT) v WJI* 219 CLR 43 as the issues raised in that appeal were the same as those raised in the present case. When the High Court delivered its decision on 6 October 2004 it became apparent that the trial judge in the present case had in fact misdirected the jury on both issues. Accordingly, on the hearing of the present appeal the Crown conceded that the trial judge had misdirected the jury and that the conviction could not stand. The conviction for rape was quashed and a verdict of acquittal was entered. The Crown did not seek an order for a retrial.

The sentence of 12 months imprisonment for the offence of unlawful entry was confirmed. However an order was made that the sentence be suspended as from the date the appellant was released on bail pending the hearing of the appeal. The effect of this order was that the appellant, a first offender, served approximately 7 months imprisonment. An operational period of 12 months from the date of suspension was fixed.