



Judgment Summary

Supreme Court
Australian Capital Territory
Court Of Appeal

Friday, 15 March 2024

Deng v Australian Capital Territory [2024] ACTCA 10

McCallum CJ, Mossop and McWilliam JJ

The Court of Appeal has dismissed an appeal by a man who was arrested in 2019 and charged with breaching a Special Interim Family Violence Order (SIFVO) which was in effect at the time. The appellant was remanded in custody but, after 58 days, he was released because the restrictions in the SIFVO which he had been charged with breaching had ended some months earlier. The appellant sued the Territory, the Magistrates Court, and the two magistrates who made the remand orders on a variety of causes of action.

The appellant first argued that, because the restrictions had ended, the SIFVO itself had ended, or, even if the SIFVO was still in effect, that the two magistrates had acted without jurisdiction by making remand orders because the restriction which he was charged with breaching had ended. The primary judge rejected these arguments and found that just because certain restrictions of an SIFVO might end, the SIFVO itself could only be ended by operation of the Family Violence Act. The primary judge further reasoned that, even though the charge would ultimately have been impossible to make out, it was still within the jurisdiction of the Magistrates Court to hear any arguments related to the charge and to deal with the appellant in the meantime—including by making remand orders where appropriate. The Court of Appeal agreed with the primary judge on both points.

The appellant next argued that the remand order was arbitrary within the meaning of the Human Rights Act, asserting that even if the detention was lawful, it was nevertheless possible to be arbitrary. The primary judge had rejected this argument, saying that the detention was not capricious or unreasoned. The appellant now pointed to the case of *Barrio v Spain* (which had not been decided at the time of handing down the primary judgment) to support his ground of appeal that the detention in fact was arbitrary. The Court of Appeal dismissed this argument, distinguishing the current case from *Barrio* in that the latter involved a systemic delay and a lack of procedural safeguards, and the applicant in that case had been “diligent in exhausting the available remedies”.

Finally, the appellant argued that the primary judge had failed to consider the effect of s 40C of the Human Rights Act on his claim, which relates to legal proceedings in relation to public authority actions. However, the Court of Appeal pointed to the judicial carveout in the Human Rights Act that provides that the Magistrates Court is not considered a public

authority except when acting in an administrative capacity. When the Magistrates Court is acting judicially, as it was in the present case, it does not come within the scope of s 40C.

The appeal was unanimously dismissed.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.

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