

AUSTRALIA / JUDGMENT

Marlow, J.A. v The Queen [1987] FCA 669

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CRIMINAL LAW - ACT -° whether power in
Children's Court to commit .

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Source record

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CRIMINAL LAW - ACT -° whether power in Children's Court to commit .
for sentence as distinct from- committing for trial -. Child'. _
Welfare Ordinance 1957. a mS 7" = aa ato
JOHN ALEXANDER MARLOW v. THE QUEEN
No. ACT G49 of 1987
CORAM: Fox, Lockhart and Kelly dd.
Canberra
18 September 1987
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"IN THE FEDERAL COURT OF AUSTRALI
AUSTRALIAN CAPITAL TERRITORY - ~
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) .No. ACT G-49 of 1987 .-._
. DISTRICT REGISTRY _ |
.- GENERAL DIVISION -)
ON -APPEAL from the Supreme.
Court of the Australian Capital
Territory oe .

BETWEEN : JOHN ALEXANDER MARLOW
 Appellant

AND: : THE QUEEN
Respondent
MINUTE OF ORDER
JUDGES MAKING ORDER: FOX, LOCKHART AND KELLY JJ.
DATE OF ORDER: 18 SEPTEMBER 1987
WHERE MADE: CANBERRA

THE COURT ORDERS
THAT: 1. The appeal be allowed.
2. Conviction and sentence be set aside.
3. The matter be remitted to the Children's Court to be
dealt with in accordance with law.
Note: Settlement and entry of orders is dealt with in
Order 36 of the Federal Court Rules.
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AUSTRALIAN CAPITAL TERRITORY
DISTRICT REGISTRY
GENERAL DIVISION
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Territory

BETWEEN : JOHN ALEXANDER MARLOW
Appellant
THE QUEEN
Respondent
CORAM: FOX, LOCKHART AND KELLY JJ.
DATE: 18 SEPTEMBER 1987

REASONS FOR JUDGMENT EX TEMPORE

THE COURT:

The court will deliver iudament in this matter now.

This case came before us as an appeal from a sentence imposed by Gallop dg. in the Supreme Court of the Australian Capital Territory. The appellant is a young person who was committed for sentence before the Supreme Court by the Children's

Court of the Territory.

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A preliminary- matter has been raised by counsel for the Crown. It was not a point that was taken- before Gallop J. Put shortly, it is that there was no power in the Children's Court to

commit for sentence as distinct from committing for trial.

Counsel for the young person has concurred in this submission: Having heard argument on the matter, we are of the view that the

point taken is correct in law.

The result is more than a minor procedural defect. The Child Welfare Ordinance 1957 provides in a special way for the disposal of cases before it with the obvious intention of making those proceedings less formal and less formidable than proceedings taken against older persons before the Magistrates Court. There is, for example, no provision in the Ordinance for the taking of pleas of guilty. Many indictable offences can be dealt with completely by the magistrate. The present was such an offence but the magistrate thought that the circumstances were

such that the case should be dealt with in the Supreme Court.

At an early stage the legal representative of the young person said that the latter had admitted the offence. Details were then given to the magistrate and it doubtless seemed incongruous that having decided that the only matter was sentencing and that it should be by the Supreme Court. the young person should. in the terms of the Ordinance. be committed for trial. This means that despite what has gone on before, an

information must be presented to the Supreme Court and on

arraignment the plea of guilty taken.

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- 'This is, however. the result of the legislation and the

Child Welfare Ordinance 1957 is not ameliorated in this respect

by any- provision of the Magistrates Court Ordinance 1930. We are-
therefore of the view that the appeal should be allowed, the
conviction and sentence set aside and the matter remitted to the
Children's Court to be dealt with-in accordance with law.

Counsel for the Appellant:

Solicitors for the Appellant:

Counsel for the Crown:

Solicitors for the Crown:

Date of hearing:

Date judgment delivered:

I certify that this and the two (2) preceding pages are a true copy of the Reasons for Judgment
herein of the

Court. S Associate: A

Date: 18 September 1987

Mr S. Pilkinton Porter Pilkinton

Mr G. Lalor

Director of Public Prosecutions

Canberra: 18 September 1987 Canberra: 18 September 1987

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