

**CITATION:** Mark Gregory Diedrich v Northern Territory of Australia & Gordon Adrian Scott [2004] NTMC 016

**PARTIES:** MARK GREGORY DIEDRICH

v

NORTHERN TERRITORY OF AUSTRALIA

AND

GORDON ADRIAN SCOTT

**TITLE OF COURT:** Local Court

**JURISDICTION:** Crimes (Victims Assistance)

**FILE NO(s):** 20216304

**DELIVERED ON:** 10<sup>th</sup> March 2004

**DELIVERED AT:** Darwin

**HEARING DATE(s):** 5<sup>th</sup> March 2004

**JUDGMENT OF:** Judicial Registrar Fong Lim

**CATCHWORDS:**

Failure to Assist – section 12 (c) Crimes Victims Assistance Act

**REPRESENTATION:**

*Counsel:*

Applicant:	Ms Saraglou
1st Respondent:	Ms Spurr
2nd Respondent:	No appearance

*Solicitors:*

Applicant:	Withnall Maley
1st Respondent:	Halfpennys
2nd Respondent:	Self

**Judgment category classification:** C

**Judgment ID number:** [2004] NTMC 016

**Number of paragraphs:** 17

IN THE LOCAL COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20216304

BETWEEN:

**MARK GREGORY DIEDERICH**  
Applicant

AND:

**NORTHERN TERRITORY OF  
AUSTRALIA**  
1st Respondent

**GORDON ADRIAN SCOTT**  
2nd Respondent

REASONS FOR DECISION

(Delivered 10<sup>th</sup> March 2004)

Judicial Registrar Fong Lim:

1. The Applicant was the victim of an assault on the 23<sup>rd</sup> of June 2002 he claims he suffered some physical injuries (the extent of which is disputed) and a psychological injury (which is disputed). There is no dispute that the Applicant is a victim pursuant to the Crimes (Victims Assistance ) Act and is *prima facie* entitled to the issue of an Assistance Certificate in his favour.
2. The First Respondent argues that the circumstances in this case are such that applying section 12 (c) of the Act would disallow any issue of certificate to the Applicant. Section 12(c) states:

“The Court shall not issue an assistance certificate –

.....

- (c) where an applicant or victim has failed to assist the Police Force in the investigation or prosecution of the offence;”

3. The First respondent relied upon the affidavit of Constable Wilcox of the 22<sup>nd</sup> December 2003. Constable Wilcox states that as the Second Respondent left the jurisdiction the prosecution could not be pursued until he returned. The Applicant was advised this was the situation. The Second Respondent then returned to the jurisdiction and Constable Wilcox reactivated the file. Constable Wilcox attests that he contacted the Applicant on two separate occasions to request that he come into the station to give a further statement and medical release authority. On the second occasion he advised the applicant that unless he provided the statement and the medical authority the prosecution could not proceed and the file would be closed. The Applicant did not provide the information and the file was closed.
4. The Applicant relies on his affidavit of the 27<sup>th</sup> of February 2004 in which he explains that he did not provide the further statement or medical authority because he thought he had already given a statement and a medical authority. The Applicant also says that he left the Northern Territory temporarily because of family reasons at this time. The Applicant put forward the argument that he at all times was co-operative with the Police and that he had a reasonable excuse for not giving the further statement requested of him.
5. The Applicant had the opportunity to read Constable Wilcox's affidavit and make no mention of the conversation referred to in paragraph 8 of that affidavit. The Applicant's affidavit is vague and imprecise in response to Constable Wilcox's affidavit. I accept that the conversations described in paragraphs 5, 6, & 7 of Constable Wilcox's affidavit and am of the view that the Applicant's response to that affidavit as inadequate. The Applicant in his own affidavit suggests that when he was requested to provide a further statement and further medical authority he thought it unnecessary. In paragraph 4 of his affidavit the Applicant says:

“.....I advised the Police officer that I had already provided a statement and thought that I had completed a medical release form already.”

6. The Applicant made a conscious decision not to provide a further statement and medical authority and has not explained why he continued not to provide that information after Constable Wilcox had advised him that a prosecution could not proceed should he not provide that information.
7. The Applicant argued that he had a reasonable excuse for not providing the further information and that is that he left the Territory temporarily for family reasons. However he had been contacted at least 3 times before he left and advised in that time of the need for the information before he left. He chose not to provide the information before he left.
8. Section 12 disallows the issue of an Assistance certificate in certain circumstances, two of those situations involve the Applicant’s dealings with the police:

### Section 12

- (b) where the commission of the offence was not reported to a member of the Police Force within a reasonable time after the commission of the offence, unless it is satisfied that circumstances existed which prevented the reporting of the commission of the offence;
  - (ba) where the commission of the offence has not been reported to a member of the Police Force before the date on which the Court considers the issuing of the assistance certificate, unless the Court is satisfied that circumstances existed which prevented the reporting of the commission of the offence
  - (c) where an applicant or victim has failed to assist the Police Force in the investigation or prosecution of the offence;
9. It is clear from sections 12(b) and (ba) that if an Applicant has failed to report an offence to police then that can be excused if the Court is satisfied that “circumstances existed which prevented the reporting”. In section 12(c)

there is no such proviso. The only decision the Court has to make is whether there has been a failure to assist and if so a Certificate shall not issue.

10. In this case the circumstances the Respondent relies upon are that the Applicant was contacted on three occasions and requested to provide further statements and he failed to do so even after he was advised that a prosecution could not proceed without that further information. The question is whether those actions of the Applicant constituted a “failure to assist”.
11. Justice Thomas in *Wolfe v Northern Territory of Australia* [2002] NTSC 26 considered what was the meaning of “assist”. In Wolfe’s case the Applicant had failed to inform the police of names of witnesses when he gave his statement then later decided to withdraw his complaint. In the initial hearing the evidence of the police officer was preferred over the evidence of the Applicant and having made that decision the magistrate then found that the circumstances leading up to the withdrawal of the complaint indicated a failure to assist.
12. The appeal to the Supreme Court asked the court to overturn the magistrate’s decision on the basis that the magistrate had relied on the withdrawal of complaint as the main factor of the failure to assist. It was argued that an applicant may not know what information was required unless specifically asked. In fact in Wolfe’s case the applicant accepted he had the knowledge at the time and submitted that he had passed it on however the magistrate preferred the evidence of the police officer over the applicant.
13. Justice Thomas accepted Mr Luppino’s reasoning in *Mark John Dobson v Northern Territory of Australias* no 20104130 delivered on 21 February 2002 in which His Worship found that an applicant was not required to take a proactive role, the applicant’s role is secondary to that of the police and the Applicant was only required to provide assistance as requested by the police. In Wolfe’s case Her Honour confirmed the magistrate’s finding that

the Applicant had been unhelpful to the police in withholding information and therefore had failed to assist the police.

14. In this present case the Applicant was asked three times over the space of four months for a further statement and medical authority and was informed on the last occasion that should he not provide the information a prosecution would not be sustainable. A specific request has been made of the Applicant and he has refused to comply.
15. In *Geiszler v Northern Territory of Australia* 19 December 1995 the Court of Appeal considered the requirements of section 12(b) however Justice Mildren in obiter made the following comments:

“As I have said, s 12 (b) casts no onus on an applicant to report. In contrast, s12(c) requires that applicant to assist the police force in the investigation or prosecution of the offence.”

And further on

“Prejudice to the police enquires is more properly to be considered under s12(c),”

16. In the present case the applicant's failure to provide a further statement and medical authority meant that the police made the decision not to continue with the prosecution. The applicant knew that failure to provide that information would mean it was likely the prosecution would not proceed and yet he chose not to provide that information, he has prejudiced the police investigation. The Applicant has failed to assist the police within the meaning of section 12(c) of the Act.
17. My orders are :
  - 17.1 The application for assistance is refused.
  - 17.2 The question of costs is reserved for further submissions at 9:30am on the 22<sup>nd</sup> of March 2004.

Dated this 10<sup>th</sup> day of March 2004

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Tanya Fong Lim  
**JUDICIAL REGISTRAR**