

CITATION: *Kylie Anne Taipale v Northern Territory of Australia* [2005]
NTMC 036

PARTIES: KYLIE ANNE TAIPALE
v
NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: LOCAL COURT

JURISDICTION: Crimes (Victims Assistance) Act (NT)

FILE NO(s): 20505434; 20505437; 20505442; 20505445;
20505455; 20505457

DELIVERED ON: 15 June 2005

DELIVERED AT: DARWIN

HEARING DATE(s): 27 April 2005; 11 May 2005, 8 June 2005

JUDGMENT OF: A/JR Day

CATCHWORDS:

Crimes (Victims Assistance) Act; extension of time; s.14; series of offences
constituting single incident

REPRESENTATION:

Counsel:

Applicant: Ms. Tregear
Respondent: Mr. Bradley

Solicitors:

Applicant: Hunt & Hunt
Respondent: Withnall Maley & Co

Judgment category classification:

Judgment ID number: [2005] NTMC 036

Number of paragraphs: 19

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

No. 20505434;
20505437;
20505442;
20505445;
20505455;
20505457

BETWEEN:

KYLIE ANNE TAIPALE
Applicant

AND:

**THE NORTHERN TERRITORY OF
AUSTRALIA**
Respondent

REASONS FOR JUDGMENT

(Delivered 15 June 2005)

ACTING JUDICIAL REGISTRAR DAY:

1. The applicant in each of these proceedings seeks an extension of time in which to file her application for an assistance certificate pursuant to s.5 of the *Crimes (Victims Assistance) Act* (NT).
2. Each application alleges that the applicant has suffered injury as a result of an offence. The offences to which each application relates are as follows:
 - a. 20505434 – Sexual intercourse without consent
 - b. 20505437 – Sexual intercourse without consent
 - c. 20505442 – Sexual intercourse without consent
 - d. 20505445 – Deprivation of liberty
 - e. 20505455 – Threat to kill
 - f. 20505457 – Aggravated assault
3. The date of the offences is stated in each application as “Between 29/9/03 and 1/10/03”. No location is given on the originating process for any

offence, rather, there is simply the notation “To be advised” in the space for location of offence on the form 9A. Further, no time is stated in relation to each offence. Whilst the applicant may not be able to give a precise time the circumstances of this matter are such that some indication of the time, at least approximate, should be provided by the applicant.

4. The scheme of the criminal injuries compensation legislation in the Northern Territory is that where a victim suffers an injury as a result of an offence then that victim may apply for an assistance certificate in respect of that injury resulting from that offence. It is therefore essential to identify in relation to each application the victim, the offence and the injury suffered. The applicant in this matter has so far failed to do this and therefore her originating process, namely the form 9A is defective.
5. The applicant in this matter relies upon an affidavit of Pamela Kay Tregear (the applicant’s solicitor) sworn 1 March 2005. Ms. Tregear’s affidavit annexes a photocopy of the applicant’s sworn statement to police of 3 October 2003 as part of annexure ‘C’. The circumstances of these offences however are such that it is not immediately obvious from perusal of the affidavit material which assault or sexual assault is the subject of which application. It is for the applicant to plead her case and the respondent is entitled to know the case that it is required to meet.
6. In my opinion it is not possible to make a determination as to the extension of time application until such time as the applicant particularises her claims by relating each of them to a particular offence on a particular date and time. In view of the material presented so far I propose to give the applicant leave to make these amendments before a final determination is made on the question of the extension of time application.
7. Assuming that the applicant’s claims can be properly particularised however I think it appropriate to make some preliminary comments as to the matters which have been the subject of extensive submissions on the question of the

extensions of time. These observations may be of assistance to the parties but are not to be taken as a final determination of the issue which, as stated above, must abide the amendment of the applicant's pleading in each matter.

8. The court's discretion to extend time pursuant to s.5(3) of the *Crimes (Victims Assistance) Act* is given in very wide terms. In a decision in the matter of *Eldridge v. Northern Territory of Australia & Riley* [2001] NTMC 76 Mr. Loadman SM found that the provision is unfettered and it is not appropriate to restrictively apply rules or criteria derived from other cases, particularly where those rules relate to other, narrower, provisions in completely different legislation. I respectfully agree with His Worship in this regard. It is a matter for the Court to consider each particular case on its own facts.
9. Notwithstanding the above, the decided cases are of course of considerable assistance in discerning the sorts of factors which have been of importance in the circumstances of other cases. I note in particular the summary of the relevant cases given in the decision of Judicial Registrar Monaghan in *Gutsch v. Northern Territory of Australia & Simon Young* [2003] NTMC 52 and the decision of the Court of Appeal in *Drover v. Northern Territory of Australia & Ebatarinja* [2004] NTCA 11, in particular the judgment of Justice Riley. Both of those decisions refer to the decision of the High Court in *Brisbane South Regional Health Authority v. Taylor* (1996) 186 CLR 541.
10. The period of delay which requires explanation in this case is fairly short namely 1 October 2004 to 1 March 2005, five months. Ms. Tregear deposes in her affidavit that she was advised in August 2004 by the Office of the Director of Public Prosecutions that material relating to the offences with which the offender had been charged was not available. She further deposes that on 14 January 2005 she saw on television that the offender had been convicted in relation to this matter. She then wrote on 24 January 2005 to

the Office of the Director of Public Prosecutions seeking information and material was provided on 22 February 2005. These applications were filed less than one week later.

11. In the circumstances I consider that there is a reasonable explanation for the delay on the part of the applicant. The delay is not to my mind contumelious, intentional, inordinate or inexcusable.
12. It is also relevant to consider the hardship to each of the parties. The hardship to the applicant is in one sense obvious. It is not true however that the applicant in this matter would be completely without remedy under the scheme if the extensions of time are not given as there is a further application in relation to this incident, filed within time, which is yet to be heard. The outcome of that application is, of course, unknown at the present time.
13. The hardship to the respondent in allowing the extension of time requires some further consideration. No particular prejudice was put to the Court of the sort which was relevant in *Gutsche* (above). It was submitted on behalf of the Respondent however that the respondent would suffer hardship in that it would be put to unnecessary inconvenience and expense in defending six claims which had no prospect of success. The respondent argued that each of these claims has no prospect of success because of the operation of s.14 of the *Crimes (Victims Assistance) Act* ('the Act').
14. Section 14(b) of the Act provides that where each of the relevant offences are part of

... a series of offences committed consecutively by one offender in circumstances in which those offences constitute a single incident

then only one application for issue of an assistance certificate may be made. The submissions of the respondent focused upon the argument that these offences constituted a single incident because the applicant's evidence is

that she was detained against her will for the whole period during which the various offences were committed against her, viz 29 September 2003 to 1 October 2003. The dominion of the offender over the applicant during the relevant period was said to be the basis upon which this is a single incident rather than a series of incidents.

15. In response to the respondent's contention the applicant submitted that in the case of *LMP v Collins* (1993) 112 FLR 289 the victim as subject to a series of rapes which took place over two days after she was kidnapped on the Stuart Highway. The offences in that matter gave rise to a total of three applications for compensation under the Act.
16. The facts of *LMP v Collins* are not identical to this case. In particular there were in that case multiple offenders and there were three distinct episodes of sexual assaults identified over the two day period. However, the exercise which I am required to undertake at this stage does not require me to determine the merits of this claim but merely to balance the hardship of the respective parties. I am satisfied that the applicant's case, in each of these applications, that the relevant offence does not form part of a single incident is arguable on the law. Of course I make no finding as to the ultimate prospects of success.
17. On balance therefore I consider that the hardship to the defendant if the time limit is extended is outweighed by the hardship to the applicant in not extending the time for the filing of the applications. This is so notwithstanding the fact that there is another pending application in relation to the same incident.
18. No other relevant matters were put by counsel in submissions and I do not consider that there are any other factors to be taken into account in the circumstances of this case.

19. Accordingly I make the following orders:

- a) That the applicant have leave to amend her applications to properly specify the offence in relation to which each proceeding is made;
- b) That the applicant file and serve an amended application in each proceeding within 14 days;
- c) That the applications for extension of time are adjourned to 2.00pm Wednesday 13 July 2005 for decision;
- d) Liberty to the parties to apply.

Dated this 15th day of June 2005

MEREDITH DAY
A/JUDICIAL REGISTRAR