

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
CIVIL DIVISION**

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO.V2/2016

CATCHWORDS

Contempt of the Tribunal – remission of sentence.

APPLICANT	Mr Brian Cantwell
RESPONDENT	Ms Maree Ann Goodwin
WHERE HELD	Melbourne
BEFORE	Judge Harbison, Vice President
HEARING TYPE	Hearing
DATE OF HEARING	25 May 2016
DATE OF ORDER	25 May 2016
CITATION	Cantwell v Goodwin (Building and Property) [2016] VCAT 842

ORDER

- 1 The order made by Her Honour Judge Jenkins on 7 April 2016 that Marie Ann Goodwin be sentenced to prison for a term of 60 days as punishment for contempt of this Tribunal is wholly remitted.
- 2 The warrant for imprisonment issued by Her Honour Judge Jenkins on 7 April 2016 is set aside.

Judge Harbison
Vice President

APPEARANCES:

For the Applicant	In person, assisted by Ron Wangman, partner
For the Respondent	No appearance

REASONS

- 1 On 16 December 2013 a Member of this Tribunal made an order that the respondent Marie Ann Goodwin vacate a property at 8250 Bass Highway Leongatha, in which she had been living. That order was the culmination of a proceeding brought before this Tribunal by Brian Cantwell seeking that Miss Goodwin deliver up and give vacant possession of that property.
- 2 The order was made after a contested hearing.
- 3 I do not need to revisit the issues in that proceeding to any great extent because it is agreed between the parties and is obvious that that order was properly made by Member Farrelly. There is no challenge to the making of this order.
- 4 Unfortunately Marie Goodwin did not comply with this order. Mr Cantwell at first sought to have the order enforced in the Supreme Court and then later returned to this Tribunal to seek that Marie Goodwin be dealt with for contempt of the Tribunal for failing to comply with the order.
- 5 The hearing took place before Judge Jenkins who was at the time Acting President of the Tribunal. On 7 April 2016 Judge Jenkins found Marie Goodwin in contempt of the Tribunal for failing to comply with that order.
- 6 Having found her so guilty, she was committed to prison for a term of 60 days with the operation of this order stayed for 14 days pursuant to section 138 (2) of the *Victorian Civil and Administrative Tribunal Act 1998*.
- 7 The order notes that Judge Jenkins explained the consequences of this order to Miss Cantwell and she indicated that she understood the effect of the orders.
- 8 It was also explained to her that if she vacated the property within 14 days of the order being made the Tribunal would consider remitting the punishment for contempt either wholly or in part.
- 9 Miss Goodwin did not comply with the order. There was some correspondence to the Tribunal from Miss Goodwin seeking an extension of time to vacate but this extension was not given. Thus she remains liable to serve a period of 60 days imprisonment pursuant to the order made by Judge Jenkins on 7 April 2016.
- 10 This matter came before me on 25 May 2016, as Judge Jenkins was not available.
- 11 Marie Goodwin accepts that she has been in contempt of the Tribunal's order. However she now seeks that the Tribunal consider a remission of the sentence imposed for that contempt. She does so on the grounds that she has now fully vacated the property, at a much later date than she was originally ordered. She says that the delay in complying with the order arose because there were livestock on the property which needed to be tagged on the ear before they could be sold. She says that the removal of the livestock was conducted as soon as that tagging had been completed, as it

was not until it was completed that she was legally allowed to sell the livestock at market.

- 12 The question before me is therefore whether in the circumstances the period of 60 days imprisonment should be remitted in whole or in part.
- 13 The power to remit an order made punishing a person for contempt is found in section 137 (7) of the *Victorian Civil and Administrative Tribunal Act* 1998. That section provides that the Tribunal may accept an apology for contempt and may remit any punishment for it either wholly or in part.
- 14 Of course every contempt of this Tribunal is serious and the lengthy period of imprisonment imposed is a clear indication that Judge Jenkins, after having heard the circumstances of Miss Goodwin's failure to comply with the earlier order, viewed those circumstances as being very serious indeed.
- 15 It should not be expected that a sentence of imprisonment imposed for contempt should in every case be remitted simply because the offender has decided at a very late stage to comply with the order.
- 16 If this were the principle to be routinely applied, then the sanction of imprisonment for contempt would lose much of its force.
- 17 However I am satisfied in this case that it is appropriate to remit the sentence. I have heard of the financial circumstances of the Applicant. I am satisfied that she has made genuine efforts to comply with the order. I also note that Mr Cantwell has indicated through his solicitors that he is satisfied that she has now complied with the order. He does not seek any sanction against her.
- 18 In all the circumstances I propose to wholly remit the punishment imposed by Her Honour Judge Jenkins. I accept the apology given in open court by the applicant and I do not propose to make any further order in respect of the contempt.

Judge Harbison
Vice President