

The King v Hatahet.pdf/17



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28 Moreover, it is now well recognised that, in the fixing of a sentence, attempts to predict what might happen upon the expiration of a non-parole period – described as the "making of an administrative guess"^[1] – would lead to outcomes that are inconsistent with a core object of sentencing, namely, the need to ensure that an offender is adequately punished.^[2] Here, as already mentioned, the statutory criterion is to fix a sentence "of a severity appropriate in all the circumstances of the offence".^[3] That includes a determination of the non-parole period in accordance with s 19AB, being "a period before the expiration of which, having regard to the interest of justice, [the offender] cannot be released".^[4] As the plurality observed in *Power v The Queen*, the nature and purpose of a non-parole period is "to provide for mitigation of the punishment of the prisoner in favour of his rehabilitation through conditional freedom, when appropriate, once the prisoner has served the minimum time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence".^[5] Adjusting a

sentence arrived at in conformity with the foregoing, whether upwards or downwards, to take account of the probability of parole would result in a sentence which then had precisely ceased to be in conformity with what the law requires.^[6]

Respondent's submissions contrary to principle and inconsistent with Pt IB of the *Crimes Act*

29 The respondent sought to distinguish the cases which have adhered to the foregoing expression of orthodox principle on the basis that they all dealt with very different sentencing regimes. *Hoare*, for example, addressed a scheme which obliged a court, when sentencing, to "have regard to the fact ... that the prisoner may be credited ... with a maximum of 15 days of remission for each month served

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1. [↑](#) *Power v The Queen* (1974) 131 CLR 623 at 629.
 2. [↑](#) *Hili v The Queen* (2010) 242 CLR 520 at 528 [25]; *R v Bruce* [1971] VR 656 at 657; *Re Jackson* [1997] 2 VR 1 at 3.
 3. [↑](#) *Crimes Act*, s 16A(1).
 4. [↑](#) *Knight v Victoria* (2017) 261 CLR 306 at 318 [8], citing *R v Knight* [1989] VR 705 at 710.
 5. [↑](#) (1974) 131 CLR 623 at 629, quoted in *Knight v Victoria* (2017) 261 CLR 306 at 318 [8].
 6. [↑](#) *Sikaloski v The Queen* [2000] WASCA 387 at [19].

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