The King v Hatahet.pdf/18

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in prison".[1] It was also concerned with increases in imprisonment rather than, as here, reductions in the term to be served.

30 The answer, the respondent said, was to be found in the terms of s 16A and no more. In that respect, it was accepted as uncontroversial by the parties that a sentencing judge may have regard to the likely circumstances attending a period of imprisonment, such as the imposition of conditions that are more onerous in nature. This was said to be reflected in some of the matters identified in s 16A(2), such as specific and general deterrence, the character, age, and physical or mental condition of the offender, the prospect of rehabilitation and the effect of any sentence on the offender's family or dependants.[2] It was submitted that the significantly reduced probability of parole could well be relevant to these types of factors. They simply represent different ways of making necessary enquiries about the future welfare of an offender and any diminished prospects of parole are relevant to that issue. The respondent also

relied upon the reference to "any other matters" in the chapeau to s 16A(2); that might, it was submitted, accommodate a consideration of the likelihood of parole although it was not shown that it was a matter a court "must" take into account.

31 The respondent also relied upon the fact of the Attorney-General's decision to refuse him parole as confirmation of what had always been his dim prospects of release following the expiration of his non-parole period. In other words, and contrary to the usual case, it would have involved no speculation on the part of the sentencing judge to have assumed that his parole would be refused.

32 The respondent did not contend that the prospects of parole would need to be considered in every case; nor indeed did the possible application of s 19ALB always compel such an enquiry. Rather, the relevance of future parole to the sentencing task would depend upon the facts of a given case. Here, it was said that the onerous conditions of the respondent's past incarceration, and the near certainty that he was always going to be refused parole after three years of imprisonment, mandated a consideration of an application of s 19ALB when he was sentenced.

33 For the following reasons, that submission must be rejected. First, it would subvert the very point of Parliament's creation of a presumption against parole in s 19ALB to reduce a term of imprisonment on that basis.

That presumption is Parliament's response to the specific nature of the threat posed by offenders who are subject to s 19ALB and the greater need to protect the community from those threats. It would make little, if any, sense to reduce a sentence of imprisonment,

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1. ↑ Former s 302 of the *Criminal Law Consolidation Act 1935* (SA).
2. ↑ *Crimes Act*, s 16A(2)(j), (ja), (m), (n) and (p).

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