

The King v Hatahet.pdf/19



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13.

which otherwise is of a severity appropriate in all the circumstances, because of that presumption. In short, any such reduction would undo the very work the presumption was intended to do.

34 Secondly, the contention that the respondent's imprisonment was more burdensome because of his reduced prospects of parole is misconceived. A similar submission was rejected by this Court in *Minogue*.^[1] Because there is only ever one sentence imposed by a court (subject to any appeal), and because the issue of parole is left to the executive branch of government, who may legitimately change the conditions for securing parole at any time, the prospect of a reduced chance of parole does not itself constitute the imposition of a greater burden arising from that sentence. As the plurality said in *Minogue*:^[2]

"The plaintiff has not lost any opportunity to be considered for release on parole – he is still eligible to be granted parole, by reason of the expiration of the non-parole period, but the

circumstances in which parole may be granted by the executive have been severely constrained. His punishment is no more severe; it remains a sentence of life imprisonment."

35 Like the plaintiff in *Minogue*, the respondent has not lost his opportunity to be considered for parole and his sentence of five years remains as it always was, notwithstanding the prospects of parole (and leaving aside the reduction in term ordered below). In any event, it should be doubted whether there was a sufficient evidentiary basis for the finding made by Basten A-JA that the reduced chance of obtaining release on parole would be likely to adversely affect the mental condition of an offender. Nor was there any evidence that the reduced prospect of parole had an effect on issues of deterrence, the prospect here of rehabilitation, or any consequences for the respondent's family or dependants.

36 Moreover, and contrary to the respondent's submissions, the common law principles derived from the decision of this Court in *Hoare* and the intermediate court decisions described above are of utility.^[3]

37 That is because the logic behind those principles is equally applicable here. Thus, it remains the case that issues of speculation and remoteness preclude

1. ¹(2019) 268 CLR 1.

2. [↑](#) (2019) 268 CLR 1 at 18 [21]; to similar effect see also *Knight v Victoria* (2017) 261 CLR 306 at 323–324 [29].
3. [↑](#) The relevance of the common law principles was confirmed in *Johnson v The Queen* (2004) 78 ALJR 616 at 622 [15]; 205 ALR 346 at 353.

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