

The King v Hatahet.pdf/21



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15.

JAGOT J.

The appeal

41 Section 19ALB(1) of the *Crimes Act 1914* (Cth) provides that the Commonwealth Attorney-General must not make a parole order in relation to certain classes of persons unless satisfied that exceptional circumstances exist to justify the making of a parole order. This appeal concerns whether a sentencing judge erred in sentencing the respondent without taking into account the likelihood (or lack thereof), by reason of s 19ALB, that the respondent would be granted parole in the future.

42 For the reasons which follow, the sentencing judge in the District Court of New South Wales (Judge Baker SC) did not err by not considering s 19ALB in sentencing the respondent. Rather, the Court of Criminal Appeal of New South Wales (Basten A-JA, Davies and Cavanagh JJ agreeing) erred in concluding that the sentencing judge, in not considering s 19ALB, erred and that, when considered, s 19ALB warranted the imposition of a lesser sentence than that imposed by the sentencing judge.^[1]

Background

43 The respondent was charged on indictment on two counts of engaging in hostile activity in a foreign State, namely Syria, with the intention of achieving one or more specified objectives contrary to s 6(1)(b) of the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth). Following his arrest, the respondent was refused bail and, because he was classified as an extreme high risk restricted ("EHRR") inmate, was held in the High Risk Management Correctional Centre ("the HRMCC") at Goulburn. There was evidence before the sentencing judge that conditions of imprisonment at the HRMCC were "extremely onerous" compared to conditions under which other prisoners, not classified as EHRR, were held in custody. The respondent pleaded guilty to one count, the other having been discontinued.

44 The sentencing judge sentenced the respondent to a term of imprisonment consisting of a non-parole period of three years^[2] and a head sentence of five years commencing from 24 August 2020. In both fixing the total sentence and setting the commencement date of the sentence, the sentencing judge took into account, amongst other things, that the respondent had been held in custody in the extremely onerous conditions at the HRMCC. The head sentence was due to expire on

1. [↑] *Hatahet v The King* [2023] NSWCCA 305 at [89], [90], [91].

2. [↑](#) Section 19AB(1) of the *Crimes Act 1914* (Cth) required the sentencing judge to fix a non-parole period, subject to certain immaterial exceptions.

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