



## HIGH COURT OF AUSTRALIA

Public Information Officer

8 November 2007

### PM v THE QUEEN

The New South Wales District Court had jurisdiction to try a child who was originally charged with an offence that was downgraded to a lesser offence that would ordinarily be dealt with by the Children's Court, the High Court of Australia held today.

In September 2004, when PM was 16, he was given a court attendance notice alleging that he had had non-consensual sexual intercourse with a girl in circumstances of aggravation, namely that she was aged under 16. She was 14. A month later, PM was given another court attendance notice charging him with a second count of aggravated sexual assault in which the circumstance of aggravation was that he caused actual bodily harm to the girl. The first charge, relating to age, was not a serious children's indictable offence, but the second, relating to bodily harm, was. Under the *Children (Criminal Proceedings) Act* (CCP Act), the NSW Children's Court has jurisdiction to hear and determine proceedings in respect of any offence other than a serious children's indictable offence. At the committal hearing at the Bidura Children's Court in Glebe in April 2005, the Director of Public Prosecutions proceeded only on the second offence and the magistrate committed PM for trial at the District Court. The DPP filed an indictment containing only the second charge. In March 2006, the DPP filed a fresh indictment containing three counts which were the first charge and two alternative counts: having sexual intercourse with a girl aged between 14 and 16, and assaulting a girl under 16 at the same time committing an act of indecency on her. None of the charges was a serious children's indictable offence.

Shortly after the District Court trial began, the jury sent a note to Judge John McGuire asking why PM was being tried as an adult and PM submitted that the proceedings should be remitted to the Children's Court. Judge McGuire concluded that, because the Children's Court had not said that the charges may not be dealt with summarily, the District Court had no jurisdiction to deal with the charges and he remitted the matter to the Children's Court. The DPP appealed to the Court of Criminal Appeal which, by majority, allowed the appeal and set aside Judge McGuire's order. PM appealed to the High Court. He argued that all offences not defined as serious children's indictable offences are required to be dealt with summarily and the District Court had no jurisdiction to hear and determine the charges because he had not asked for a jury trial and the Children's Court had not decided that it could not properly dispose of the particular charges in a summary manner.

The High Court unanimously dismissed the appeal. It held that, while section 44 of the CCP Act gives the District Court power to remit a matter to the Children's Court if the District Court is satisfied that it does not have jurisdiction to deal with the charge, nothing in the Act excludes or limits its jurisdiction in respect of indictable offences (crimes that warrant a trial by jury). Criminal proceedings against PM were commenced appropriately in the District Court. An indictment that lays charges different from those on which they were committed for trial does not affect the jurisdiction of the court in which the indictment is filed. The CCP Act does not give the Children's Court exclusive jurisdiction over indictable offences that are not serious children's indictable offences. The condition for exercising the power under section 44 is not satisfied and the District Court had jurisdiction to deal with the charges against PM.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*