



HIGH COURT OF AUSTRALIA

Manager, Public Information

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JOSH CARROLL v THE QUEEN

Today, the High Court allowed Mr Carroll's appeal and remitted to the Court of Criminal Appeal of the Supreme Court of New South Wales for reconsideration the Director of Public Prosecution's appeal against the sentence imposed on Mr Carroll for his plea of guilty to manslaughter. The decision of the five member High Court was unanimous.

One evening in May 2007 Mr Carroll and his friends left a hotel at about the same time as Mr Criniti. A dispute arose between some members of the group and Mr Criniti and Mr Criniti made some threats to harm them. Mr Carroll responded by head-butting Mr Criniti, who fell backwards onto the road and hit the back of his head on the roadway. Ten days later Mr Criniti died.

Mr Carroll pleaded guilty to manslaughter and was sentenced by a judge of the District Court of New South Wales to a three-year term of imprisonment, to be served by way of periodic detention, with a non-parole period of 18 months. The sentencing judge gave detailed reasons for that decision. The DPP appealed against that sentence to the Court of Criminal Appeal and submitted that the sentence was manifestly inadequate. By majority, the Court of Criminal Appeal accepted the submissions put by the DPP and re-sentenced Mr Carroll to a period of full-time incarceration.

Mr Carroll was granted special leave to appeal to the High Court on the question of whether the majority of the Court of Criminal Appeal erred in concluding that the sentence imposed by the primary judge was manifestly inadequate.

The High Court found that the majority in the Court of Criminal Appeal was wrong to assess the adequacy of the sentence on the footing that Mr Carroll should not have been provoked by Mr Criniti's conduct. The primary judge had found that Mr Carroll had been subject to some provocation and the Crown had not challenged this finding. Secondly, the High Court said that it was an error for the Court of Criminal Appeal to assess the seriousness of the offence by characterising it as one in which "severe injury was clearly foreseeable and death at least a possibility". Mr Carroll's admission of guilt acknowledged no more than that his act in striking Mr Criniti carried an appreciable risk of serious injury.

The High Court remitted the DPP's appeal against the inadequacy of the sentence to the Court of Criminal Appeal for determination because the task of deciding that question is better undertaken by that Court.

- *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.*