HIGH COURT OF AUSTRALIA

27 June 2013

GEORGE ELIAS v THE QUEEN & ANOR
CHAFIC ISSA v THE QUEEN & ANOR

[2013] HCA 31

Today the High Court unanimously dismissed an appeal by two men from a decision of the Court of Appeal of the Supreme Court of Victoria which had rejected their appeals against the severity of the sentences imposed for their respective convictions for attempting to pervert the course of justice.

The appellants each pleaded guilty before the Supreme Court of Victoria to offences which included a count of attempting to pervert the course of justice, which, under Victorian law, carries a maximum penalty of imprisonment for 25 years. The appellants were each sentenced to eight years' imprisonment for that offence. The conduct constituting the attempted perversion of justice consisted of acts of assistance given to a fugitive, Antonios (Tony) Mokbel, who had been convicted and sentenced for a Commonwealth offence.

The appellants appealed to the Court of Appeal against the severity of their sentences. They submitted that the sentencing judge was wrong not to take into account, as a factor in mitigation of their sentences, that there was a Commonwealth offence of attempting to pervert the course of justice which carried a lesser maximum penalty of five years' imprisonment. The Court of Appeal rejected that argument on the basis that the *Sentencing Act* 1991 (Vic) does not permit a sentencing judge to have regard to some other maximum penalty prescribed for a Commonwealth offence when sentencing for a Victorian offence.

The appellants sought, and were granted, special leave to appeal to the High Court. The High Court unanimously dismissed their appeals. The Court said that there is no common law principle requiring a sentencing judge to take into account as a matter of mitigation that a different offence, for which it was open to prosecute a person, has a lesser maximum penalty. The Court said that the decision of the Court of Appeal of the Supreme Court of Victoria in *R v Liang* (1995) 124 FLR 350, which held that a sentencing judge must take into account in mitigation of sentence that there is a less punitive offence upon which the prosecution could have proceeded and which is as appropriate to the facts as the charged offence, should not be followed.

- *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.*

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893
Email: bwickham@hcourt.gov.au Website: www.hcourt.gov.au