HIGH COURT OF AUSTRALIA

4 May 2016

PHILIP NGUYEN v THE QUEEN
[2016] HCA 17

Today the High Court unanimously dismissed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales. The High Court held that the Court of Criminal Appeal was correct to quash the sentences imposed by the sentencing judge and re-sentence the appellant as was done.

The appellant shot and wounded the deceased, who was a police officer, while the deceased was lawfully executing a search warrant in company with other police officers on premises in close proximity to the appellant's home. The shot struck the deceased in the arm, thereby causing him a serious but non-fatal gunshot wound. In the course of the fire-fight which ensued, one of the other police officers fired a shot which was intended for the appellant, but which unfortunately instead hit the deceased in the neck, thereby inflicting a wound from which he later died.

About two weeks before these events, the appellant was the victim of an attempted robbery. The Crown accepted that it could not exclude as a reasonable possibility that the appellant honestly believed that the deceased was someone posing as a police officer who was intent on robbing the appellant. The appellant pleaded guilty to one count of manslaughter and one count of wounding with intent to cause grievous bodily harm. The appellant was taken to have accepted responsibility for killing the deceased by excessive self-defence on the basis that, by firing at the deceased, he substantially contributed to the ensuing exchange of gunfire where it was reasonably foreseeable that someone in the vicinity of the exchange might be fatally, even if inadvertently, shot.

The appellant was sentenced by a judge of the Supreme Court of New South Wales to a total effective sentence of nine years and six months' imprisonment. On a Crown appeal, the Court of Criminal Appeal held, with reference to *R v De Simoni* (1981) 147 CLR 383 ("*De Simoni*"), that the sentencing judge erred in her assessment of the objective gravity of the offence of manslaughter by contrasting it with what the sentencing judge supposed would have been the gravity of the offence if the appellant had known that the deceased was a police officer. The Court of Criminal Appeal also considered that the sentencing judge erred by not cumulating part of the sentence imposed for the offence of wounding on the sentence imposed for the offence of manslaughter. The Court of Criminal Appeal was satisfied that the sentences were manifestly inadequate. The Court of Criminal Appeal quashed the sentences and re-sentenced the appellant to a total effective sentence of 17 years and two months' imprisonment.

By grant of special leave, the appellant appealed to the High Court. The High Court unanimously dismissed the appeal, holding that although the Court of Criminal Appeal's reference to *De Simoni* was misplaced, it was correct to hold that the sentencing judge erred in her assessment of the objective gravity of the offence of manslaughter and correct to quash the sentences imposed by the sentencing judge and re-sentence the appellant as was done.

- *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 Fax: (02) 6270 6868
Email: bwickham@hcourt.gov.au Website: www.hcourt.gov.au