



HIGH COURT OF AUSTRALIA

11 September 2019

CRAIG WILLIAM JOHN MINOGUE v STATE OF VICTORIA
[2019] HCA 31

Today the High Court unanimously held, in answer to questions stated in a special case, that s 74AB of the *Corrections Act 1986* (Vic) ("the Act") is not invalid, and that the question of the validity of s 74AAA of the Act did not arise in the circumstances of this case.

In 1988, the plaintiff was convicted of the murder of Angela Rose Taylor, a constable in the Victorian police force, and was sentenced by the Supreme Court of Victoria to imprisonment for life. The Court set a non-parole period of 28 years, during which term the plaintiff would not be eligible to be released on parole. After the plaintiff's non-parole period ended, he applied to the Adult Parole Board ("the Board") for parole. That application has not yet been determined. On 14 December 2016, a new provision in the Act, s 74AAA, commenced operation. The plaintiff challenged the constitutional validity of s 74AAA (as then in force) in the High Court, and in *Minogue v Victoria* (2018) 92 ALJR 668; 356 ALR 363; [2018] HCA 27, the High Court held that s 74AAA did not apply to the plaintiff.

On 1 August 2018, the Act was further amended to insert a new s 74AB and to substitute a new s 74AAA. The new s 74AB sets out "[c]onditions for making a parole order for Craig Minogue". It relevantly provides that the Board may make a parole order in respect of the plaintiff "if, and only if" the Board is satisfied that the plaintiff "is in imminent danger of dying or is seriously incapacitated and, as a result, he no longer has the physical ability to do harm to any person" and "has demonstrated that he does not pose a risk to the community", and the Board "is further satisfied that, because of those circumstances, the making of the order is justified". The substituted s 74AAA imposes the same conditions for making a parole order but applies to any person convicted of murder where the victim was a police officer.

The plaintiff commenced proceedings in the High Court challenging the constitutional validity of s 74AB and, if it applied, s 74AAA. As the plaintiff was not in imminent danger of dying or seriously incapacitated, the plaintiff contended that the provisions, in their substantive operation and practical effect, legislatively resentenced him for the same crime, and that the resentencing was legislative punishment contrary to Ch III of the *Constitution*.

The High Court held that s 74AB was relevantly indistinguishable from the provision upheld in *Knight v Victoria* (2017) 261 CLR 306; [2017] HCA 29. Section 74AB did not, in either its substantive operation or practical effect, impose additional or separate punishment on the plaintiff beyond the punishment imposed by the sentencing court in a way that involved the exercise of judicial power. A majority considered that s 74AB did no more than alter the conditions to be met before the plaintiff could be released on parole. The Court concluded that s 74AB was valid and applied to the plaintiff. It was therefore unnecessary for the Court to consider the validity of s 74AAA.

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.