HIGH COURT OF AUSTRALIA

4 May 2012

KEVIN GARRY CRUMP v STATE OF NEW SOUTH WALES
[2012] HCA 20

Today the High Court rejected a challenge to the validity of s 154A of the *Crimes (Administration of Sentences) Act* 1999 (NSW). The Court unanimously held that s 154A did not impeach, set aside, alter or vary the plaintiff's life sentence.

On 20 June 1974, after their trial in the Supreme Court of New South Wales, the plaintiff, Kevin Garry Crump, and his co-accused, were convicted of murder and for conspiring to murder. Both were sentenced to life imprisonment. The sentencing remarks of the trial judge were to the effect that they should spend the remainder of their lives in gaol. At the time of sentencing, statute conferred upon the Governor a power of release on licence. The law was subsequently changed as to permit a sentencing court to impose a determinate sentence of imprisonment and to fix a minimum term before an offender was eligible for parole. After unsuccessfully applying to the Supreme Court of New South Wales for such a determination in 1992, the plaintiff made a subsequent application for determination which was granted by the Supreme Court on 24 April 1997 with the effect that, if the parole system were to remain unchanged, he would become eligible for release on parole as of 13 November 2003.

Further amendments were made to the relevant New South Wales sentencing and parole legislation, with s 154A becoming effective as of 20 July 2001. By reason of s 154A, the plaintiff would not be eligible to be released on parole unless and until the requirements of s 154A were satisfied.

The plaintiff brought proceedings in the original jurisdiction of the High Court complaining that s 154A had the effect of stultifying his benefit or entitlement of eligibility to be released on parole. The plaintiff submitted that the determination of the Supreme Court made on 24 April 1997 was a judgment, decree, order or sentence of the Supreme Court which constituted a "matter" for the purposes of s 73 of the Constitution and that, as the State legislature lacked the power to set aside, vary, alter or otherwise stultify the effect of the determination, s 154A was invalid.

The High Court unanimously rejected all but the last of these submissions, which was not dealt with. The practical reality which faces a sentencing judge is the prospect of legislative and administrative change in parole systems from time to time. Neither the substance nor the form of the 1997 Supreme Court determination had created any right or entitlement for the plaintiff to be released on parole. Section 154A was therefore not invalid.

- *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 Manager, Public Information
Telephone: (02) 6270 6998 Mobile: 0415 144 283 Fax: (02) 6270 6868
Email: enquiries@hcourt.gov.au Website: www.hcourt.gov.au