



HIGH COURT OF AUSTRALIA

Public Information Officer

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ALLAN BAKER v THE QUEEN

The High Court of Australia today upheld the validity of New South Wales legislation dealing with the determination of minimum sentences of prisoners whom trial judges had recommended never be released.

Mr Baker, now 56, and Kevin Gary Crump were convicted in the New South Wales Supreme Court in 1974 of the shooting murder of Ian Lamb, whom they robbed of \$20, near Narrabri in NSW in November 1973 and conspiracy to murder of Virginia Morse a few days later. Mr Baker had worked on the farm on which Mrs Morse, her husband and three children lived near Collarenebri in north-west NSW. When Brian Morse was absent, Mr Baker and Mr Crump stole his car and two firearms, abducted Mrs Morse and took her over the border into Queensland. During a period of 20 hours, they tortured and raped Mrs Morse then shot her through the eyes. In sentencing them, Justice Robert Taylor told them: "I believe you should spend the rest of your lives in jail and there you should die. If ever there was a case where life imprisonment means what it says ... this is it."

Under section 13A of the Sentencing Act (since repealed by the Crimes (Sentencing Procedure) Act), prisoners serving life sentences could apply to the Supreme Court to determine a minimum period before being eligible for parole. But where a judge recommended against release, a prisoner had to have served at least 20 years and the Court had to be satisfied that "special reasons" justified a determination of a minimum term. The Court was required to give substantial weight to recommendations and comments by the trial judge. When Mr Baker applied for a determination, Justice Greg James was not satisfied that special reasons existed. Mr Baker had argued that his good conduct in jail, his strong prospects of rehabilitation and the fact that Mr Crump had his sentence determined in 1997 (before section 13A was amended to include the "special reasons" requirement) justified a determination. Mr Baker appealed unsuccessfully to the Court of Criminal Appeal, then appealed to the High Court.

The Court held that the NSW Parliament was entitled to treat prisoners such as Mr Baker as exceptional cases. The Parliament had the power to create a special regime for the most serious offenders and to select non-release recommendations as the criterion for distinguishing them from other offenders. The requirement of special reasons did not lack meaning or content. Mr Baker failed to show that establishing special reasons was a futile charade and that no application could succeed. He failed to show that determining an application under section 13A of the Sentencing Act was not an exercise of judicial power.

The High Court, by a 6-1 majority, dismissed the appeal.

- *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.*