



HIGH COURT OF AUSTRALIA

23 October 2015

THE QUEEN v BARBARA BECKETT

[2015] HCA 38

Today the High Court unanimously allowed an appeal against orders of the Court of Criminal Appeal of the Supreme Court of New South Wales ("the CCA") that permanently stayed the prosecution of the respondent for an offence under s 319 of the *Crimes Act* 1900 (NSW) ("the Act"). The High Court set aside the orders of the CCA, enabling the prosecution of the respondent to proceed.

The respondent is a solicitor who was approved by the Chief Commissioner of State Revenue to electronically lodge certain tax returns and payments, including stamp duty. She was authorised to stamp transfers of real property using accountable stamps on the condition that the duty payable in respect of a transfer was available to her prior to processing the relevant transaction online. On 11 June 2010, the respondent stamped a transfer and completed an online assessment of duty payable for the conveyance of a unit. The duty was not paid to the Office of State Revenue ("OSR"), to which it was payable.

As part of the OSR's investigation into the outstanding duty, the respondent attended a compelled interview conducted by investigators from the OSR. It is alleged that, during the interview, the respondent produced photocopies of two forged bank cheques and made false statements to the investigators, with a view to concealing the true facts and thereby preventing her prosecution for one or more offences under taxation law.

Section 319 of the Act makes it an offence for a person to do any act, or make any omission, intending in any way to pervert the course of justice. The respondent was arraigned in the District Court of New South Wales on an indictment which charged her with an offence under s 319. By notice of motion dated 4 December 2013, the respondent sought to quash the indictment or to stay the proceedings against her permanently. The respondent contended that there was no "course of justice" in existence at the time of the impugned conduct, that is, during the interview. Sweeney DCJ dismissed the respondent's motion. Her Honour held that a prosecution for an offence under s 319 could be maintained notwithstanding that no judicial proceedings had been commenced at the time of the impugned conduct.

The respondent appealed to the CCA on numerous grounds. The CCA determined that Sweeney DCJ was wrong to conclude that the s 319 prosecution could proceed. Their Honours held that the impugned conduct occurred before the jurisdiction of a court or competent judicial tribunal was invoked and was, therefore, incapable of constituting an offence under s 319. The prosecution for the s 319 offence was permanently stayed and the respondent's other grounds of appeal were dismissed.

By grant of special leave, the appellant appealed to the High Court. The Court unanimously allowed the appeal, holding that an act done before the commencement of judicial proceedings may constitute an offence contrary to s 319 where it is done with intent to frustrate or deflect the course of judicial proceedings that the accused contemplates may possibly be instituted. Liability for the offence hinges on the intention to pervert the course of justice and not upon the perversion of a course of justice already in existence.

- *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.*