



HIGH COURT OF AUSTRALIA

18 March 2020

SWAN v THE QUEEN
[2020] HCA 11

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 appellant and an accomplice were charged with the murder of 79-year-old Mr Kormilets. Mr Kormilets was an active man who was in apparently good health when the appellant and the accomplice attacked him after breaking into his home, causing severe injuries to his brain, face, kidneys and chest. Following the assault, Mr Kormilets spent almost four months in hospital before being transferred to a high-level care facility. His mental and physical condition was so poor that he was unable to undertake, or comprehend, any daily living activities. Eight months after the assault, Mr Kormilets suffered a fracture to the neck of his left femur. A decision was made not to operate on Mr Kormilets and he died in hospital from the consequences of the fracture shortly thereafter.

Whether the appellant caused Mr Kormilets' death was a live issue at trial. The Crown advanced three possible pathways for the jury to conclude that the appellant caused the death. The central issue before the Court of Criminal Appeal and the High Court was whether it was open to the jury to convict upon the third pathway: that Mr Kormilets' low quality of life as a consequence of the assault caused the decision not to undergo surgery, which would reasonably have been expected to save his life. The Court of Criminal Appeal concluded that there was sufficient evidence for this pathway to be open to the jury.

There was no dispute on appeal that causation is satisfied where an accused's act is "a substantial or significant cause of death" or a "sufficiently substantial" cause of the death charged. The High Court unanimously held that on the evidence it was open to the jury to conclude that surgery was available and would reasonably have been expected to save Mr Kormilets' life, that Mr Kormilets or his son made a decision that the surgery should not be undertaken, and that the decision not to operate was motivated by Mr Kormilets' low quality of life due to the assault. Accordingly, it was open to the jury to convict the appellant on the third pathway of causation.

- *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.*