



## HIGH COURT OF AUSTRALIA

5 August 2020

### LEWIS v AUSTRALIAN CAPITAL TERRITORY [2020] HCA 26

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Australian Capital Territory ("the Territory"). The appellant had been unlawfully imprisoned in full-time detention for 82 days by reason of an invalid decision of the Territory's Sentence Administration Board ("the Board") to cancel his periodic detention. The issue considered in this appeal was whether the appellant was entitled to substantial damages to compensate him or vindicate his rights, even though the Board was required by statute to decide to cancel his periodic detention so that he would otherwise have been lawfully imprisoned in full-time detention. The Court held that the appellant was not entitled to substantial damages.

The appellant was sentenced to a term of 12 months' imprisonment for recklessly or intentionally inflicting actual bodily harm on another person by smashing a glass into a man's face during a fight in Canberra. Pursuant to provisions of the *Crimes (Sentence Administration) Act 2005* (ACT) in effect at the time, his sentence was to be served by a regime of periodic detention on weekends instead of full-time imprisonment. Under those provisions, the appellant was obliged to report for each period of detention. The appellant failed to report for periodic detention on multiple occasions. For this reason, the Board was required by statute to decide to cancel the appellant's periodic detention, and it did so decide. The appellant was then arrested and imprisoned for 82 days until he was released on bail pending a challenge to the lawfulness of his imprisonment.

The primary judge found that the appellant's imprisonment was without lawful authority because the Board's decision to cancel his periodic detention was invalid due to a denial of procedural fairness. This finding was not subsequently challenged. The primary judge also held that the appellant was not entitled to substantial damages to compensate for the wrongful act attributed to the Board or for its consequences, because the appellant's imprisonment in full-time detention was inevitable following his breaches of the periodic detention obligations. The primary judge awarded him nominal damages of \$1, which recognised that although his imprisonment was inevitable his right to be at liberty had been violated. The appellant challenged the award of only nominal damages. The award was upheld in the Court of Appeal and in the High Court.

The High Court held that an independent species of "vindicatory damages", or substantial damages merely for the infringement of a right, and not for other purposes including to rectify the wrongful act or compensate for loss, is unsupported by authority or principle. And, since the same imprisonment would have occurred lawfully even if the Board had not made an invalid decision, there was no loss for which to compensate. Two justices considered that this particular appeal failed at a point anterior to the application of the compensatory principle because the appellant's right to be at liberty was already so qualified and attenuated, due to his sentence of imprisonment together with the operation of the Act, that he suffered no real loss.

- *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.*