HAMRA v THE QUEEN (A14/2017)

Court appealed from: Court of Criminal Appeal of the Supreme Court of South Australia
[2016] SASCFC 130

Date of judgment: 8 December 2016

Special leave granted: 7 April 2017

This appeal concerns the issue of whether, to prove an offence of "persistent sexual exploitation of a child" ("PSE"), the prosecution must prove features of the circumstances surrounding each act of sexual exploitation relied upon which are peculiar to that act, such that the occasion of each act can be separately identified.

Section 50(1) of the *Criminal Law Consolidation Act 1935* (SA) ("the CLCA") creates the offence of PSE, whereby an adult, over a period of not less than 3 days, commits more than 1 act of sexual exploitation of a particular child under the prescribed age (for present purposes a child under the age of 17 years). The Act defines an '*act of exploitation'* as an act which '*could, if it were able to be properly particularised, be the subject of a charge of a sexual offence'*.

The appellant's case is that proof of the constituent sexual offences involves proving the elements of those offences by adducing evidence capable of proving beyond reasonable doubt that there was an *actua*l occasion on which each element of the sexual offence in question occurred, and also proving that two such offences at least 3 days apart took place before the child attained 17 years of age. The respondent argues that the common law requirement for the particularity - which enables each occasion of offending conduct to be separately identified - has been abrogated for the purposes of proving an offence against s 50(1).

This case concerns allegations of historical sexual abuse by the male appellant of the male victim 'B' between 1977 and 1982 when the victim was aged between 12 and 17 years of age. The appellant was acquitted of the charge of PSE by the trial judge sitting alone on the basis that there was no case to answer because of the generalised nature of B's allegations. The DPP sought permission to appeal against that acquittal. The appeal was allowed on the basis that the Court of Criminal Appeal ("the CCA") considered that despite the generalised nature of the assertions, there was a case to answer. A re-trial was ordered. No specific order was made in relation to permission to appeal.

The appellant appealed to the High Court.

The grounds of appeal are:

- That the CCA erred in holding that the trial judge erred in concluding that there was no case to answer because the complainant's allegations were of a generalised nature such that it was not possible to identify two or more proved sexual offences within the meaning of s 50 of the CLCA.

- In the alternative, that the Court of Appeal erred in failing to address whether permission to appeal should be granted having regard, *inter alia*, to considerations relating to double jeopardy.

The Court has directed that this appeal be heard at the same time as the appeal of *Chiro v The Queen* (A9/2017) which raises similar issues.