

GRAJEWSKI v DIRECTOR OF PUBLIC PROSECUTIONS (NSW) (S141/2018)

Court appealed from: New South Wales Court of Criminal Appeal
[2017] NSWCCA 251

Date of judgment: 24 October 2017

Special leave granted: 18 May 2018

On 8 May 2016 Mr Paul Grajewski participated in an environmental protest at the Port of Newcastle. He mounted the stairs of a coal loader, which was in use but was immediately shut down due to safety concerns. After climbing to the top of the loader, Mr Grajewski attached himself to it using a harness and roping device. He then lowered himself through the air to approximately 10 metres above a platform, where he remained suspended until police removed him. The loader was out of operation for more than two hours as a result of Mr Grajewski's actions.

Mr Grajewski was charged with property damage under s 195(1)(a) of the *Crimes Act 1900* (NSW) ("the Crimes Act"), which provides as follows:

"(1) A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another is liable:

(a) to imprisonment for 5 years ..."

The charge stated that Mr Grajewski "did intentionally or recklessly damage property causing the temporary impairment of the working machinery ...". Magistrate Morahan found the offence proved and fined Mr Grajewski \$1,000.00.

Mr Grajewski appealed to the District Court against his conviction, contending that he could not have committed the offence charged because the loader had not been damaged.

On 29 May 2017 Judge Bright dismissed the appeal. Her Honour found that although the charge had been imprecisely particularised, there had been the necessary "interference with functionality of the property" so as to establish "damage" within the meaning of s 195(1) of the Crimes Act.

At the request of Mr Grajewski, on 21 June 2017 Judge Bright submitted a question of law to the Court of Criminal Appeal ("the CCA") for determination, under s 5B of the *Criminal Appeal Act 1912* (NSW). The question, which followed a recitation of the facts, was whether the facts could support a finding of guilt of an offence under s 195(1)(a) of the Crimes Act.

The CCA (Leeming JA, Johnson and Adamson JJ) unanimously answered the question in the affirmative. Their Honours held that "destroys or damages" in s 195(1) of the Crimes Act "includes physical interference which obstructs the working of a machine or renders it useless, either permanently or temporarily."

Mr Grajewski had so interfered, as his physical presence attached to the loader had caused the machine to be inoperable for two hours.

The ground of appeal is:

- The CCA erred in finding that the offence of damage to property under s 195 of the Crimes Act could be committed solely by temporary interference with property's functionality, in circumstances where there is no physical derangement of the property (temporary or otherwise). Based on this finding, the CCA found that the facts stated supported a finding of guilt for an offence contrary to the provision.