

## **QUINN v. THE QUEEN (S143/2011), GREEN v. THE QUEEN (S146/2011)**

Court appealed from: New South Wales Court of Criminal Appeal  
[2010] NSWCCA 313

Date of judgment: 17 December 2010

Date special leave granted: 8 April 2011

These appeals concern the parity of sentences imposed on co-offenders involved in a large scale cannabis plantation.

The appellant, Shane Quinn, and a number of others, including Brett Green, were involved in the cultivation of a large commercial quantity of cannabis plants valued at about \$4 million.

Both appellants pleaded guilty on 20 July 2009 in the District Court of NSW to an offence of cultivation of not less than a commercial quantity of cannabis plants contrary to section 23(2)(a) of the *Drug Misuse and Trafficking Act 1985* (NSW). The maximum penalty is 20 years imprisonment. Mr Quinn was held to have been a principal in the offence and on top of the hierarchy. Mr Green, together with 2 co-offenders, Kody Taylor and Garry Mason, was regarded as a 'partner' with Mr Green at a more senior level than either Mr Taylor or Mr Mason.

On 14 August 2009 the appellants were sentenced by Boulton ADCJ. The sentences imposed were as follows: Mr Green was sentenced to imprisonment for period of 4 years including a non-parole period of 2 years, both such periods commencing on 17 May 2009; Mr Quinn was sentenced to imprisonment for a period of 6 years including a non-parole period of 3 years, both such periods commencing on 30 April 2008.

In arriving at these sentences his Honour allowed each of the appellants a 20% discount for his plea. (Boulton ADCJ had earlier sentenced Mr Taylor to imprisonment for 3 years including a non-parole period of 18 months on a charge of knowingly take part in the supply of a commercial quantity of cannabis.)

The Crown appealed asserting that the sentences imposed on each of Mr Quinn and Mr Green were manifestly inadequate and that the discount of 20% for the utilitarian value of the plea was in all the circumstances excessive. The appellants raised the issue of parity with the sentence imposed on Mr Taylor.

The Court of Criminal Appeal constituted a bench of five Justices to hear the appeals. The appeals were allowed by majority (McClellan CJ at CL, Hulme and Latham JJ; Allsop P and McCallum J dissented). Both the majority and the minority found that the sentences were manifestly inadequate but reached different conclusions about the degree of the inadequacy. The Court quashed the sentences imposed on the appellants. Mr Green was sentenced to imprisonment for a non-parole period of 3 years commencing on 17 May 2009 together with a further term of 2 years commencing on 17 May 2012 and Mr Quinn was sentenced to imprisonment for a non-parole period of 5 years commencing on 30 April 2008 together with a further term of 3 years commencing on 30 April 2013.

The ground of appeal is effectively identical in each matter:

- The Court of Criminal Appeal erred in holding that it was appropriate to allow the Crown appeal regarding the appellant and to thereby create disparity between the appellant's new sentence and that imposed on another offender who had not been the subject of a Crown appeal.