



HIGH COURT OF AUSTRALIA

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MAHRAN BEHROOZ v SECRETARY OF THE DEPARTMENT OF IMMIGRATION AND
MULTICULTURAL AND INDIGENOUS AFFAIRS, ATTORNEY-GENERAL FOR THE
COMMONWEALTH OF AUSTRALIA, AUSTRALASIAN CORRECTIONAL MANAGEMENT
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Harsh conditions of detention did not provide a defence to a charge of escaping from immigration detention, the High Court of Australia held today.

Mr Behrooz, Mahmood Gholani Moggaddam and Davood Amiri were among six detainees who allegedly escaped from the Woomera Detention Centre in South Australia on 18 November 2001. Since the three men were granted special leave to appeal last August Mr Moggaddam and Mr Amiri have been deported and the criminal charges against them dropped, so the Court rescinded their leave to appeal. Mr Behrooz, an Iranian national, remained the sole appellent.

In Port Augusta Magistrates Court the three men were charged with escaping from immigration detention contrary to section 197A of the Migration Act. They argued that conditions at Woomera were such that detention was punitive and not a form of detention authorised by the Migration Act, therefore escape did not contravene section 197A. The magistrate granted their application to have summonses issued seeking material dating back to December 1999 about conditions at Woomera, which has since closed. The respondents unsuccessfully sought to have the summonses set aside on the ground that they were an abuse of process because the material had no evidentiary value. The respondents appealed to the SA Supreme Court which upheld the appeal and set aside the summonses. The Full Court of the Supreme Court, by majority, refused leave to appeal, concluding that even if the documents were to show that conditions at Woomera were harsh, this was no defence to charges under section 197A. The three men then appealed to the High Court.

The Court held that Mr Behrooz had no right to escape from Woomera, even if he could show that conditions of detention were harsh. The Court held that Mr Behrooz would be entitled to seek legal redress for any civil wrong or criminal offence committed against him. The information yielded by the summonses may have assisted Mr Behrooz to demonstrate that his conditions of detention gave him a case for such redress, but it would not assist his argument that he was not in immigration detention, or that he was entitled to escape. Therefore the summonses did not have a legitimate forensic purpose.

The Court, by a 6-1 majority, dismissed the appeal with costs.

- *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.*