



HIGH COURT OF AUSTRALIA

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MARTIN LEACH v THE QUEEN

Northern Territory courts had not erred in deciding that a convicted murderer and rapist could be kept in prison for life without any chance of parole, the High Court of Australia held today.

On 20 June 1983, Mr Leach, armed with a knife, abducted two young women, aged 18 and 15, from a swimming pool and forced them to accompany him to a nearby gully. He cut off their clothing and used it to bind and gag the 15-year-old. Mr Leach stabbed the 18-year-old and, with the knife in her, bound and gagged and raped her. He stabbed and killed the younger woman. He stabbed the older woman again and left her fatally wounded. Mr Leach, who had already served a prison term for raping a woman at knifepoint in her home, was convicted of two offences of murder and one of rape. At the time, the mandatory sentence for murder was imprisonment for life. He was also sentenced for life for the rape of the 18-year-old.

The NT *Sentencing (Crime of Murder) and Parole Reform Act* came into effect on 11 February 2004. It provided for the fixing of non-parole periods for life sentences for murder imposed after that date. For people already serving life sentences, section 18 provides that the prisoner's sentence is taken to include a non-parole period of 20 years, or 25 years if the prisoner was serving sentences for two or more murder convictions. However, the Supreme Court may, on application by the Director of Public Prosecutions, revoke the non-parole period and either fix a longer non-parole period under section 19(4) or refuse to fix a non-parole period under section 19(5). The Court may refuse to fix a non-parole period if satisfied that the level of culpability in the commission of the offence is so extreme the community interest in retribution, punishment, protection and deterrence can only be met if the offender is imprisoned for the term of his or her natural life without the possibility of release on parole.

On 2 March 2004, the DPP applied under section 19 for the Supreme Court to revoke the non-parole period fixed by section 18 and to take one of the options in section 19(4) or (5). Chief Justice Brian Martin made an order revoking the 25-year non-parole period for the two murder convictions and refused to fix a non-parole period. The majority of the Court of Criminal Appeal upheld that order. Justice Stephen Southwood would have fixed a non-parole period of 40 years which would have meant that Mr Leach could be considered for parole at age 64. Mr Leach appealed to the High Court, arguing that Chief Justice Martin failed to give effect to ordinary sentencing considerations when applying section 19(5), and that he had not shown he was satisfied beyond reasonable doubt that Mr Leach's culpability was so extreme as to require a sentence of life imprisonment without possibility of parole.

The High Court unanimously dismissed the appeal. It held that section 19(5) of the Act is not to be read as requiring a court to consider the exercise of some separate discretion after it has reached a conclusion that the prisoner's culpability was so extreme that the community interest could only be met by life imprisonment. The word "may" in "may refuse to fix a non-parole period" confers a power to be exercised upon the court being satisfied of the matters described in section 19(5). Any disputed question of fact adverse to the prisoner are to be made to the criminal standard of proof (beyond reasonable doubt), but once the relevant facts are found a judgment would then remain to be made about the level of culpability and what the community interest required.

- *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.*