



HIGH COURT OF AUSTRALIA

Manager, Public Information

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DUPAS v THE QUEEN [2010] HCA 20

On 15 April 2010, the High Court pronounced orders dismissing this appeal, in which the appellant sought to challenge a refusal by the Victorian Supreme Court and Court of Appeal to grant a permanent stay of his murder trial. Today the Court published its reasons for making those orders.

The appellant was charged with the murder, on 1 November 1997, of Mersina Halvagas at Fawkner Cemetery in Melbourne. He applied to the trial judge for a permanent stay of the trial on the ground that the adverse pre-trial publicity about his two previous murder convictions and the current murder charge made a fair trial impossible. The appellant had been convicted in August 2000 of the murder of Nicole Patterson and again in August 2004 of the murder of Margaret Maher. He had been sentenced to life imprisonment upon both convictions. All three women had been killed by knife attack. The two prior convictions and the murder charge had received extensive media publicity over a number of years in newspapers and books, and on internet sites and television programs. The appellant had been identified in the media from an early stage in police investigations as a suspect in the murder of Ms Halvagas.

The trial judge refused the application and concluded that a jury, properly directed, could be trusted to decide whether the appellant's guilt had been established on the basis of the evidence led in court and without regard to information from other sources. The appellant was convicted on 9 August 2007 and thereafter sentenced to life imprisonment. The Court of Appeal of the Supreme Court of Victoria held that the trial judge had not erred in refusing to grant a permanent stay. A majority of the Court, however, allowed the appeal on other grounds and ordered a re-trial.

The appellant was granted special leave to appeal to the High Court on 12 February 2010 on the question of the permanent stay only. The appellant sought orders for the imposition of a permanent stay or a stay until further order.

At the conclusion of the hearing on 15 April 2010, the Court pronounced orders dismissing the appeal. In its reasons published today, the Court held that the relevant question in determining whether to grant a stay is whether an apprehended defect in a trial is of such a nature that there is nothing the trial judge could do in the conduct of the trial to relieve against its unfair consequences. The Court held that the apprehended defect in the appellant's trial – the prejudice to the appellant arising out of extensive adverse pre-trial publicity – was capable of being remedied by the trial judge giving thorough and appropriate directions to the jury. The trial judge committed no error of principle in deciding that the appellant's trial, if allowed to proceed, would be fair. Furthermore, in all of the circumstances of this trial, the pre-trial publicity was not such as to give rise to an unacceptable risk that it had deprived the appellant of a fair trial.

- *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.*