



HIGH COURT OF AUSTRALIA

22 September 2010

DICKSON v THE QUEEN

[2010] HCA 30

In 2008, Kevin Dickson was convicted in the Supreme Court of Victoria of conspiracy to steal under s 321 of the *Crimes Act* 1958 (Vic) ("the Victorian Crimes Act"). He was sentenced to imprisonment for five years and six months. The conspiracy involved an agreement to steal, contrary to s 74 of the Victorian Crimes Act, a large quantity of cigarettes. The cigarettes had been seized by the Australian Customs Service ("Customs") and transferred to a storage facility within a secured warehouse operated by Dominion Group (Vic) Pty Ltd ("Dominion"). Customs paid storage fees to Dominion for exclusive use of a padlocked area of the warehouse. A month after their transfer, the cigarettes were removed from the storage area by cutting the padlock that secured it.

The charge against Mr Dickson and the conduct of his prosecution were based on there having been an offence committed against the law of Victoria alone. At trial, the judge directed the jury that they could assume that the cigarettes had been under the control of, and thus belonged to, Dominion.

The Court of Appeal dismissed an application by Mr Dickson to appeal against his conviction and sentence. Mr Dickson then sought special leave to appeal to the High Court against the Court of Appeal's decision. On 23 April 2010, three Justices of the High Court referred some of the proposed grounds of appeal in his application for special leave for further consideration by an enlarged Bench of the Court. At the hearing, Mr Dickson sought and was granted special leave to appeal on a further ground based on the operation of s 109 of the Constitution. His submission was that the section of the Victorian Crimes Act under which he had been charged was inconsistent with provisions of the *Criminal Code* (Cth) ("the Commonwealth Criminal Code") concerning theft of Commonwealth property and conspiracy under federal law. He argued that, by operation of s 109 of the Constitution, the Victorian Crimes Act provision was therefore invalid to the extent of the inconsistency.

The High Court today upheld Mr Dickson's appeal on this constitutional ground, quashing the presentment preferred against him and his conviction and setting aside his sentence of imprisonment. The Court held that the cigarettes that formed the basis of the offence with which he had been charged were property belonging to the Commonwealth because they were in the possession of Customs at the time they were stolen. That meant that the theft provision in s 131.1 of the Commonwealth Criminal Code applied and that the conspiracy provision in s 11.5 of the Commonwealth Criminal Code could attach to it. It also meant that, if the Victorian provisions had a relevant valid operation, the cigarettes were property belonging to the Commonwealth for the purposes of s 72 of the Victorian Crimes Act, which informs the meaning of the offence of theft found in s 74.

The Court held that the Victorian conspiracy provision was directly inconsistent with the Commonwealth conspiracy provision because s 321 of the Victorian Crimes Act, if valid, effectively defined the offence of conspiracy more widely than conspiracy under s 11.5 of the Commonwealth Criminal Code. The Victorian provision would thereby alter, impair or detract from the operation of the Commonwealth law. The Victorian law was thus invalid to the extent of the inconsistency.

By virtue of the Court's decision on the constitutional question, it was unnecessary for the Court to consider the remainder of Mr Dickson's application for special leave to appeal. The proposed grounds of appeal remaining in that application were thus dismissed.

- *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.*