



HIGH COURT OF AUSTRALIA

8 June 2011

GARY ERNEST WHITE v THE DIRECTOR OF PUBLIC PROSECUTIONS FOR WESTERN AUSTRALIA

[2011] HCA 20

Today the High Court dismissed an appeal against the decision of the Court of Appeal of the Supreme Court of Western Australia to make a crime-used property substitution declaration under s 22 of the *Criminal Property Confiscation Act 2000* (WA) ("Act") in respect of property owned by the appellant.

In 2003 the appellant was convicted of a wilful murder which was committed immediately outside the boundary fence of fenced and gated premises in Maddington, Western Australia in 2001. At the time of the offence, the appellant was leasing the premises. The appellant shot at the deceased five times inside the premises, the gates to which had been locked at the appellant's direction. At least two shots wounded the deceased. The deceased climbed over one of the locked gates to escape the appellant but was fatally shot while on the ground outside the gate. The appellant was sentenced to strict-security life imprisonment with a non-parole period of 22 years.

Section 22 of the Act provides that a "crime-used property substitution declaration" can be made, on the application of the Director of Public Prosecutions ("the DPP"), if two conditions are satisfied: first, the crime-used property is not available for confiscation because it neither belongs to nor is effectively controlled by the offender; and second, it is more likely than not that "criminal use" was made of the "crime-used property". If the conditions in s 22 of the Act are satisfied, the court must make a declaration that property owned by the offender is available for confiscation instead of the crime-used property.

Section 147 provides that a person makes criminal use of property if the person, alone or with anyone else, uses the property in a way that brings the property within the definition of "crime-used property". Section 146(1)(a) provides that property is crime-used if the property is used, directly or indirectly, in or in connection with the commission of a confiscation offence, or in or in connection with facilitating the commission of a confiscation offence. Section 146(1)(c) provides that property is "crime-used" if any act or omission was done, omitted to be done or facilitated in or on the property in connection with the commission of a confiscation offence. Relevantly, a "confiscation offence" is an offence that is punishable by imprisonment for two years or more (s 141(1)(a)).

The DPP applied for a crime-used property substitution declaration against the appellant. The primary judge dismissed the DPP's application holding that the appellant's conduct only fell within s 146(1)(c), which was not covered by the definition of "criminal use" in s 147. The Court of Appeal of Western Australia allowed the DPP's appeal and made the declaration sought by the DPP against the appellant. The Court of Appeal held that the concept of "criminal use" in s 147 encompassed all activities that brought property within the definition of "crime-used" under s 146. The appellant appealed to the High Court.

The High Court held that "makes criminal use of property" within s 147 encompasses conduct within s 146(1)(c) of the Act. It was not disputed that the premises leased by the appellant were "crime-used" within s 146(1)(c). The appellant therefore made "criminal use" of the premises within s 147. The conditions of s 22 of the Act were satisfied and the Court of Appeal was correct to make the crime-used property substitution declaration.

- *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.*