



HIGH COURT OF AUSTRALIA

6 December 2011

BRETT ANDREW GREEN v THE QUEEN
S146/2011

SHANE DARRIN QUINN v THE QUEEN
S143/2011

[2011] HCA 49

On 3 August 2011 the High Court allowed appeals by Shane Darrin Quinn and Brett Andrew Green against sentences imposed upon them by the Court of Criminal Appeal of New South Wales, and made an order which reinstated the sentences originally imposed by the sentencing judge. Today the Court published its reasons for that order.

The appellants pleaded guilty in 2009 to offences contrary to s 23(2) of the *Drug Misuse and Trafficking Act* 1985 (NSW). The appellants took part with others, including Kodie Taylor, in an enterprise for the cultivation of cannabis plants, of not less than the commercial quantity, for supply. Quinn was the principal of the enterprise, and Green and Taylor were both involved at a senior level, although Green was slightly more senior than Taylor.

When the primary sentencing judge sentenced the appellants, he had already sentenced eight other offenders involved in the enterprise, including Taylor, and imposed sentences which had regard to the parity principle as between the appellants and Taylor. Taylor had been sentenced to three years' imprisonment with a non-parole period of 18 months. Quinn was sentenced to six years' imprisonment with a non-parole period of three years, and Green was sentenced to four years' imprisonment with a non-parole period of two years.

The Crown lodged appeals in the Court of Criminal Appeal against the sentences imposed on the appellants, but not against the sentence imposed on Taylor. Under s 5D of the *Criminal Appeal Act* 1912 (NSW) the primary purpose of appeals against sentences by the Crown is "to lay down principles for the governance and guidance of courts having the duty of sentencing convicted persons." The Court of Criminal Appeal, in the exercise of its jurisdiction under s 5D, has a discretion to decline to interfere with a sentence even though the sentence is erroneously lenient. By majority, the Court allowed the appeals and imposed sentences of eight years' imprisonment with a non-parole period of five years for Quinn and five years' imprisonment with a non-parole period of three years for Green.

The appellants were each granted special leave to appeal to the High Court. The first ground of appeal was that the Court of Criminal Appeal had erred in finding it appropriate to allow the Crown appeal in respect of each appellant, thereby creating a disparity between the appellants' sentences and the sentence imposed on Taylor. The second ground of appeal related to the finding by the

Court of Criminal Appeal, absent any submission from the Crown or prior intimation by that Court, that the sentence imposed on Taylor was manifestly inadequate.

The High Court held by majority that the Court of Criminal Appeal erred in failing to give adequate weight to the purpose of Crown appeals and the importance of the parity principle, and that it also erred in allowing the appeals partly on a basis that was never raised in argument. Although the sentences imposed on the appellants were manifestly inadequate, they were not derisory and entailed a substantial measure of punishment by full-time imprisonment. There were appropriate relativities between the sentences imposed on the appellants and the sentence imposed on Taylor. The intervention of the Court of Criminal Appeal created unacceptable disparity between the new sentences and the sentence that stood unchallenged in respect of Taylor. Having regard to the disparity consequential upon allowing the appeals and the significant delays which occurred in the appellate process, the Court of Criminal Appeal ought to have exercised its discretion to dismiss the appeals.

The High Court further held by majority that the Court of Criminal Appeal was not entitled to allow the appeal on the basis that the sentence imposed upon Taylor was manifestly inadequate. To do so involved a breach of procedural fairness.

- *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.*