



## HIGH COURT OF AUSTRALIA

14 September 2012

### DIMITRIOS LIKIARDOPOULOS v THE QUEEN

[2012] HCA 37

Today the High Court unanimously dismissed an appeal by Dimitrios Likiardopoulos against his conviction for murder. The Court held that there was no abuse of process in prosecuting the appellant as an accessory to murder in circumstances where the Crown had accepted pleas of guilty to lesser offences from five other people involved in the deceased's death, nor had the trial judge erred in leaving the accessorial case to the jury in those circumstances.

In March 2007, the appellant and others were involved in a sustained assault on an intellectually handicapped 22 year-old man which lasted about two days. The appellant's involvement in the assault included two "king hits" which dislodged two of the deceased's teeth, as well as punching and kicking the deceased. There was also evidence that the appellant had directed or encouraged the others in the assault. The deceased died as a result of the assault.

Seven people, including the appellant, were charged with the deceased's murder. Five of those people pleaded guilty to lesser offences, and the charge against a sixth person was dropped. The appellant was tried for murder in the Supreme Court of Victoria. The prosecution case was advanced on two alternative grounds. The principal case was that the appellant was liable for murder by virtue of his participation in a joint criminal enterprise. The alternative case ("the accessorial case") was that the appellant, knowing that one or more people would assault the deceased intending to do him really serious injury, intentionally assisted or encouraged the commission of the fatal assaults.

The appellant appealed against his conviction to the Court of Appeal of the Supreme Court of Victoria on grounds including that the trial judge erred in her directions concerning the accessorial case and in leaving the accessorial case to the jury. The Court of Appeal dismissed the appeal.

The appellant was granted special leave to appeal to the High Court on the sole ground that it was an error to leave the accessorial case to the jury. The appellant submitted that in law he could not be an accessory to murder in circumstances in which the Crown had accepted pleas of guilty to lesser offences from each of the persons said to be the principal offenders. On this submission, there was no "murder" to which he could be an accessory. Alternatively, the appellant submitted that it was an abuse of process for the Director of Public Prosecutions to accept pleas of guilty to lesser offences while prosecuting the appellant as an accessory to murder.

The High Court dismissed the appeal. The Court unanimously held that the evidence at the trial was capable of proving that one or more of those whom the appellant directed and encouraged to assault the deceased were liable as principals for the murder. There was no inconsistency between the other participants' convictions for manslaughter and the appellant's conviction for murder on the accessorial case because the evidence in each case differed. Further, the acceptance of the pleas of guilty to lesser offences involved an exercise of prosecutorial discretion. The majority held that

certain decisions involved in the prosecution process are insusceptible of judicial review. Nothing in the conduct of the proceedings produced unfairness of the kind that would lead a court to intervene to prevent abuse of its process.

- *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.*