



## HIGH COURT OF AUSTRALIA

2 October 2013

### WILLIAM DAVID BUGMY v THE QUEEN

[2013] HCA 37

Today the High Court unanimously allowed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales, which had increased the sentence imposed on William David Bugmy for intentionally causing grievous bodily harm to a correctional services officer.

Mr Bugmy, an Aboriginal Australian who grew up in circumstances of social deprivation, had been sentenced for the offence in the District Court of New South Wales to a term of imprisonment comprising a non-parole period of four years with a balance of term of two years. The Director of Public Prosecutions appealed to the Court of Criminal Appeal on the ground that the sentence was manifestly inadequate. The Court of Criminal Appeal, allowing the Director's appeal, re-sentenced Mr Bugmy for the offence to a non-parole period of five years with a balance of term of two years and six months.

In the High Court, Mr Bugmy argued that the Court of Criminal Appeal erred in allowing the Director's appeal without having held that the original sentence was manifestly inadequate and without having considered the exercise of its residual discretion to dismiss an appeal by the Director. Mr Bugmy also argued that the Court of Criminal Appeal erred in holding that the extent to which his deprived background as an Aboriginal Australian could be taken into account in sentencing diminished with time and repeat offending.

The High Court unanimously allowed Mr Bugmy's appeal. The High Court held that since the Court of Criminal Appeal had not addressed the question of whether the original sentence was manifestly inadequate, which was in truth the sole ground of the Director's challenge, and had not considered its residual discretion to dismiss the Director's appeal, its authority to re-sentence the appellant had not been enlivened. The High Court therefore set aside the order of the Court of Criminal Appeal relating to the offence and remitted the Director's appeal to that Court.

The High Court also held that the same sentencing principles apply irrespective of the identity of a particular offender or his or her membership of an ethnic or other group. Additionally, the joint reasons held that the effects upon an offender of profound deprivation do not diminish over time and should be given full weight when sentencing the offender. However, those effects do not necessarily serve to mitigate an offender's sentence given the conflicting purposes of punishment, such as rehabilitation and personal and general deterrence, which must be balanced in each individual case.

- *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.*