



HIGH COURT OF AUSTRALIA

14 March 2013

YATES v THE QUEEN

[2013] HCA 8

Today the High Court allowed an appeal by a man with an intellectual disability from a decision of the Court of Criminal Appeal of the Supreme Court of Western Australia which upheld an order that he be detained in prison indefinitely.

In March 1987, the applicant was convicted of one count of aggravated sexual assault and one count of deprivation of liberty. He was sentenced to a maximum of seven years' imprisonment for those offences. The sentencing judge made an order under s 662 of the *Criminal Code* (WA) directing that on the expiration of the term of his imprisonment the applicant should be detained "during the Governor's pleasure in a prison". The applicant's term of imprisonment expired in June 1993. He has remained in prison since that date pursuant to the s 662 order and has been in prison for six years longer than the maximum sentence that could have been imposed for the offence of aggravated sexual assault.

In July 1987, a majority of the Court of Criminal Appeal dismissed an appeal from the making of the s 662 order, but reduced the maximum sentence to six years and three months to account for a period of pre-sentence custody.

On 20 June 2012, the applicant sought special leave to appeal to the High Court from the Court of Criminal Appeal's decision. The High Court unanimously allowed the appeal. The Court held that the evidence before the sentencing judge was not capable of supporting the making of an order for the applicant's indefinite detention and that the interests of justice required that leave to appeal be granted out of time.

- *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.*