



HIGH COURT OF AUSTRALIA

21 May 2014

DO YOUNG (AKA JASON) LEE v THE QUEEN SEONG WON LEE v THE QUEEN

[2014] HCA 20

Today the High Court unanimously allowed two appeals from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales, which had upheld the convictions of the appellants on various drug and firearms offences on the basis that there had not been a miscarriage of justice within the meaning of s 6(1) of the *Criminal Appeal Act* 1912 (NSW).

The appellants (a father and son) had been the subject of an investigation by the New South Wales Crime Commission ("the Commission"). As part of that investigation and pursuant to powers given by the *New South Wales Crime Commission Act* 1985 (NSW) ("the NSWCC Act"), the appellants were summoned by the Commission to give evidence before it. Section 13(9) of the NSWCC Act required the Commission to make a direction prohibiting the publication of evidence given before it where publication might prejudice the fair trial of a person who may be charged with an offence. The appellant in the first matter, Jason Lee, gave evidence on two occasions. He was subsequently charged with various drug and firearms offences. The appellant in the second matter, Seong Won Lee, gave evidence on one occasion. At that time, he had been charged with firearms offences and a charge relating to a drug offence was imminent. The transcripts of the appellants' evidence given before the Commission were unlawfully published to members of the New South Wales Police Force and to officers of the Director of Public Prosecutions before the appellants' joint trial. On 16 March 2011, the appellants were convicted of various drug and firearms offences.

The appellants appealed their convictions on the basis that there had been a miscarriage of justice, by reason of the prosecution's possession and possible use of the appellants' evidence given before the Commission. The Court of Criminal Appeal dismissed the appeals. By grant of special leave, the appellants appealed to the High Court.

The High Court held that the purpose of s 13(9) of the NSWCC Act was to protect the fair trial of a person who may be charged with offences. That purpose supports the fundamental principle of the common law referred to in *X7 v Australian Crime Commission* (2013) 248 CLR 92; [2013] HCA 29, that the prosecution is to prove the guilt of an accused person. That purpose was not met in the present case, with the consequence that the appellants' trial differed in a fundamental respect from that which our criminal justice system seeks to provide and amounted to a miscarriage of justice within the meaning of s 6(1) of the *Criminal Appeal Act*. The High Court quashed the appellants' convictions and ordered that a new trial be had.

- *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.*