



HIGH COURT OF AUSTRALIA

4 November 2015

THE QUEEN v PHAM
[2015] HCA 39

Today the High Court unanimously held that the Court of Appeal of the Supreme Court of Victoria was wrong to determine that the respondent should be sentenced for a federal offence in accordance with current sentencing practices in Victorian courts, rather than current sentencing practices throughout the Commonwealth. The High Court also held that the Court of Appeal erred in its use of a statistical analysis of past sentences in finding that the respondent's sentence was manifestly excessive.

In 2013, the respondent travelled to Vietnam from Australia. Upon his return to Melbourne Airport, flight crew informed officers of the Australian Customs and Border Protection Service that the respondent had required medical attention during the flight for a potential drug overdose, and that a crew member had found two clear plastic packages containing white powder in a bathroom that the respondent had used. Customs officers detained the respondent, who admitted under caution that the packages were his and that he guessed they contained heroin. Testing established that the packages contained heroin mixed with caffeine. The total weight of pure heroin was 577.1 grams.

The respondent pleaded guilty to one count of importing a marketable quantity of a border controlled drug, contrary to s 307.2(1) of the *Criminal Code* (Cth). Under the *Criminal Code*, a marketable quantity of heroin is between two grams and 1.5 kilograms. He was convicted in the County Court of Victoria and sentenced to eight years and six months' imprisonment with a non-parole period of six years.

The respondent appealed to the Court of Appeal against his sentence. The Court of Appeal allowed the appeal and re-sentenced the respondent to six years' imprisonment with a non-parole period of four years. The presiding judge of appeal said that the appellant pleaded guilty in the reasonable expectation that he would be sentenced in accordance with current sentencing practices in Victorian courts. The judge considered that, having regard to a statistical analysis which plotted the correlation between past sentences for drug couriers and the weight of the drug imported, the sentence imposed was outside the range of available sentences indicated by current Victorian sentencing practices. The other members of the Court of Appeal also took into account the statistical analysis in finding that the sentence was manifestly excessive.

By grant of special leave, the Commonwealth Director of Public Prosecutions appealed to the High Court. The High Court unanimously held that the need for sentencing consistency throughout Australia requires courts to have regard to sentencing practices across the country when sentencing federal offenders. Further, the Court of Appeal's use of the statistical analysis erroneously treated the weight of the drug imported as the only variable affecting the seriousness of past offences for the purpose of determining current sentencing practices. The appeal was allowed and the matter remitted to the Court of Appeal for redetermination according to law.

- *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.*