HIGH COURT OF AUSTRALIA

6 April 2016

MOK v DIRECTOR OF PUBLIC PROSECUTIONS (NSW)

[2016] HCA 13

Today the High Court dismissed an appeal from the Court of Appeal of the Supreme Court of New South Wales. The High Court held that by operation of s 89(4) of the *Service and Execution of Process Act* 1992 (Cth) ("SEPA") the appellant could be found guilty of the offence of attempting to escape lawful custody under s 310D of the *Crimes Act* 1900 (NSW) ("Crimes Act").

SEPA provides for the execution throughout Australia of warrants authorising the apprehension of persons under State laws. Under SEPA, a person named in a warrant issued in one State may be apprehended in another State and taken before a magistrate in that State. On production of the warrant, the magistrate in the second State must make an order under s 83(8) of SEPA for the person to be remanded on bail to appear in, or be taken in custody to, the State in which the warrant was issued. Section 89(4) of SEPA relevantly provides that the law relating to the liability of a person who escapes from lawful custody which is in force in the place of issue of the warrant will apply to a person taken to the place of issue of the warrant in compliance with an order under s 83(8).

In 2003, the appellant was arrested and charged in New South Wales with fraud offences to which he pleaded guilty. He was committed to the District Court of New South Wales for sentence on 13 April 2006 but did not appear. A warrant was issued for his apprehension ("the NSW warrant"). Several years later the appellant was arrested in Victoria and charged with separate offences. After being sentenced for those offences, the appellant was arrested by a Victorian police officer pursuant to the NSW warrant. The following day a Victorian magistrate made an order under s 83(8)(b) of SEPA requiring the appellant be taken in custody to New South Wales. While in custody at Tullamarine Airport, the appellant escaped and was re-arrested a short time later. Once in New South Wales, he was charged under s 310D of the Crimes Act, which makes it an offence for an "inmate" to escape or attempt to escape from lawful custody.

At first instance the magistrate dismissed the charge against the appellant, finding that while s 310D was applicable by virtue of s 89(4) of SEPA, the appellant was not an "inmate" within the meaning of that term in s 310D of the Crimes Act. The Supreme Court of New South Wales overturned the magistrate's decision. The appellant appealed to the Court of Appeal. In dismissing the appeal, the Court of Appeal held that s 89(4) of SEPA acted on s 310D of the Crimes Act to create a new federal offence which applied to all persons being taken to New South Wales in compliance with a relevant order under SEPA. Section 89(4) applied s 310D of the Crimes Act in an altered form, meaning it was not relevant whether the appellant was an "inmate" within the scope of s 310D in its ordinary operation as an offence under State law.

By grant of special leave, the appellant appealed to the High Court. The High Court dismissed the appeal, holding that s 89(4) of SEPA applied s 310D of the Crimes Act as federal law and, by majority, that it was not a requirement of the federal offence that the appellant answer the description of "inmate".

- *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.*

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893 Fax: (02) 6270 6868
Email: enquiries@hcourt.gov.au Website: www.hcourt.gov.au