



HIGH COURT OF AUSTRALIA

15 June 2016

HAMD ALQUDSI v THE QUEEN

[2016] HCA 24

Today the High Court published its reasons for orders made after a hearing on 10 February 2016 dismissing the applicant's motion for an order that he be tried by a judge without a jury. The High Court held that provisions of the *Criminal Procedure Act 1986* (NSW) ("the CPA") which provided for trial by a judge without a jury were not capable of being applied to the applicant's trial because their application would be inconsistent with s 80 of the Constitution.

The applicant was charged on indictment with seven offences under the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth) ("the Act"). Section 9A of the Act provided that a prosecution for an offence against the Act "shall be on indictment". Section 68 of the *Judiciary Act 1903* (Cth) ("the Judiciary Act") confers jurisdiction on the courts of a State or Territory to try offences against a law of the Commonwealth and applies the laws of the State or Territory respecting procedures for trials on indictment. The applicant was arraigned on the indictment in the Supreme Court of New South Wales and pleaded "not guilty" to each charge. His trial was listed to commence on 1 February 2016 before a judge and jury.

By notice of motion filed in the Supreme Court, the applicant sought an order under s 132 of the CPA that he be tried by a judge alone. That notice of motion was removed into the High Court and a case stated for consideration by the Full Court. The question referred to the Full Court by the case stated was whether s 132(1) to (6) of the CPA were incapable of being applied to the applicant's trial by s 68 of the Judiciary Act because their application would be inconsistent with s 80 of the Constitution, which states, "[t]he trial on indictment of any offence against any law of the Commonwealth shall be by jury".

The majority found that that question could only be answered favourably to the applicant by overruling *Brown v The Queen* (1986) 160 CLR 171; [1986] HCA 11. The majority declined to do so, holding there was no reason to doubt the correctness of *Brown*. Their Honours rejected the argument that s 80 could be read as subject to exception when, for example, a court assesses it is in the interests of justice that the trial on indictment of an offence against a law of the Commonwealth be by judge alone.

- *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.*