



HIGH COURT OF AUSTRALIA

17 August 2017

JULIAN KNIGHT v THE STATE OF VICTORIA & ANOR
[2017] HCA 29

Today the High Court unanimously held, in answer to a question posed in a special case, that s 74AA of the *Corrections Act* 1986 (Vic) ("the Act") is not invalid on the ground that it is contrary to Ch III of the Constitution.

In 1988, the plaintiff pleaded guilty to seven counts of murder and 46 counts of attempted murder. The Supreme Court of Victoria sentenced him to imprisonment for life for each count of murder and imprisonment for 10 years for each count of attempted murder, and fixed a non-parole period of 27 years. The plaintiff's non-parole period expired on or about 8 May 2014. On 2 April 2014, the Victorian Parliament inserted into the Act a new s 74AA, headed "Conditions for making a parole order for Julian Knight". The effect of s 74AA is to prevent the Adult Parole Board ("the Board") from ordering that the plaintiff be released on parole unless satisfied, amongst other things, that he is in imminent danger of dying or is seriously incapacitated and that, as a result, he no longer has the physical ability to do harm to any person.

On 11 March 2016, the plaintiff lodged an application for a parole order with the secretary of the Board. On 27 July 2016, a division of the Board consisting of a retired Judge of the County Court of Victoria and two non-judicial members decided to require certain reports, including a report from the Secretary to the Department of Justice and Regulation under s 74AA(3). Those reports have not yet been received and the Board has taken no further steps to progress the plaintiff's application.

The plaintiff brought proceedings in the original jurisdiction of the High Court seeking a declaration that s 74AA is invalid on the ground that it is contrary to Ch III of the Constitution. Invoking the principle associated with *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51; [1996] HCA 24, the plaintiff submitted first, that s 74AA interferes with the sentences imposed by the Supreme Court in a manner which substantially impairs the institutional integrity of the Supreme Court, and second, that s 74AA enlists judicial officers who are members of the Board in a function that is incompatible with the exercise of federal jurisdiction by the courts of which those judicial officers are members.

The High Court held that s 74AA did not interfere with the sentences imposed by the Supreme Court. Whether or not the plaintiff would be released on parole at the expiration of the non-parole period was outside the scope of the exercise of judicial power constituted by imposition of the sentences. The High Court also held that, because the Board has not in fact been constituted, and does not need to be constituted, to include a current judicial officer, it was unnecessary and inappropriate to determine whether s 74AA would be invalid in circumstances in which the function conferred by s 74AA might be sought to be exercised by a division of the Board which included a judicial officer.

- *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.*