HIGH COURT OF AUSTRALIA

13 September 2017

STEPHEN JOHN HAMRA v THE QUEEN
[2017] HCA 38

Today the High Court dismissed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of South Australia.

The appellant was charged with an offence of persistent sexual exploitation of a child contrary to s 50(1) of the *Criminal Law Consolidation Act* 1935 (SA). Section 50(1) creates an offence where an adult person, "over a period of not less than 3 days, commits more than 1 act of sexual exploitation of a particular child under the prescribed age". Section 50(2) provides that "an act of sexual exploitation" is an act of a kind that could be the subject of a charge of a sexual offence, if it were able to be properly particularised. Section 50(4) provides that a charge under s 50(1) must allege with sufficient particularity the period during which the acts of sexual exploitation allegedly occurred and the alleged conduct comprising the acts of sexual exploitation.

The appellant was tried by a judge alone in the District Court of South Australia. Following the close of the prosecution case, the appellant submitted that there was no case to answer. The trial judge accepted this submission and delivered a verdict of not guilty. The trial judge held that the complainant had been unable to relate the alleged acts of sexual exploitation to any particular occasion, circumstance, or event beyond "what typically or routinely or generally occurred", so that it was impossible to identify two or more of the requisite acts.

The prosecution appealed to the Full Court of the Supreme Court of South Australia, sitting as the Court of Criminal Appeal. The Court of Criminal Appeal allowed the appeal, and remitted the matter for retrial.

By grant of special leave, the appellant appealed to the High Court on the grounds that the Court of Criminal Appeal had erred by (i) concluding that there was a case to answer, and (ii) failing to address the appellant's submission that permission to appeal should not be granted on the basis of, among other things, double jeopardy considerations.

The High Court rejected both grounds of appeal. The Court unanimously held that although s 50(1) requires a jury, or judge sitting alone, to identify two or more acts of sexual exploitation, proof of the offence does not require evidence which allows acts of sexual exploitation to be delineated by reference to differentiating circumstances. It would, for example, be sufficient if the jury (or judge in a trial by judge alone) accepted that an act of sexual exploitation was committed every day over a two week period without any further differentiation of those occasions and deduced from that evidence that two or more acts must have occurred over a period of "not less than 3 days". The Court also held that although the majority of the Court of Criminal Appeal did not expressly give reasons for why permission to appeal should be granted, it was clear that the issue was considered and decided. Nor did the majority err by failing expressly to refer to double jeopardy as a factor weighing against the consideration of whether to grant permission to appeal to correct an error of law. The appeal was dismissed.

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- *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.*