



HIGH COURT OF AUSTRALIA

13 March 2019

PAUL OLAF GRAJEWSKI v DIRECTOR OF PUBLIC PROSECUTIONS (NSW)
[2019] HCA 8

Today the High Court, by majority, allowed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales and quashed the appellant's conviction and sentence for the offence of intentionally or recklessly destroying or damaging property belonging to another, contrary to s 195(1)(a) of the *Crimes Act 1900* (NSW).

During a protest, the appellant climbed onto a ship loader, which was shut down due to safety concerns. The appellant used a harness and rope to lock himself to the ship loader and lowered himself into a position which posed a risk of serious harm to him. The ship loader remained inoperable until the appellant was removed. This was a period of around two hours. The appellant was charged with an offence against s 195(1)(a), particularised as doing "damage [to] property causing the temporary impairment of the working machinery" of the ship loader. He was convicted of this offence before the Local Court at Newcastle.

The appellant appealed against his conviction to the District Court of New South Wales at Newcastle, which stated a case to the Court of Criminal Appeal asking whether the facts could support a finding of guilt for an offence contrary to s 195(1)(a). The Court of Criminal Appeal answered the question "yes".

By grant of special leave, the appellant appealed to the High Court. By majority, the Court held that damage to property within the meaning of s 195(1) requires proof that a person's act or omission has occasioned some alteration to the physical integrity of the property, even if only temporarily. The majority reasoned that, as a matter of ordinary English, a thing is not damaged if the physical integrity of the thing is not altered in any respect. The majority held that nothing in the authorities justified an interpretation of the expression "destroys or damages" in s 195(1) as extending to conduct which does not in any respect alter the physical integrity of the thing said to be damaged. Here, the ship loader was shut down because of safety concerns, not because the appellant had brought about any alteration to its physical integrity.

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.