



HIGH COURT OF AUSTRALIA

Public Information Officer

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ANTHONY VASKEN MARKARIAN v THE QUEEN

The New South Wales Court of Criminal Appeal had erred in the formulation and application of sentencing principles when it dealt with Mr Markarian's sentence for drug offences, the High Court of Australia held today. The Court remitted the matter to the CCA for further consideration.

Mr Markarian, 41, was a heroin user and Vincent Caccamo his dealer. In April 1998, Mr Markarian was jailed and by the time of his release 18 months later he had taken himself off both heroin and methadone. He resumed contact with Mr Caccamo and started taking drugs again. Mr Markarian worked as a driver for Mr Caccamo and was paid in heroin. He was still on parole when charged with knowingly taking part in the supply of a commercial quantity (415 grams) of heroin, which carries a maximum penalty of 20 years' jail. Mr Markarian pleaded guilty and asked that four other offences be taken into account in sentencing. Judge Greg Hosking in the District Court sentenced him to prison for two years and six months, with a non-parole period of 15 months which would have expired in October 2003. Mr Caccamo was sentenced to eight years' jail with a non-parole period of five years. The Crown appealed, alleging Mr Markarian's sentence was inadequate.

The CCA allowed the appeal and re-sentenced Mr Markarian to eight years' jail with a non-parole period of four-and-a-half years. He is eligible for parole in January 2007. The CCA held that the 15-year maximum penalty for an offence involving less than 250 grams should be reduced by a third to 10 years due to Mr Markarian's lesser role in the drug operation, his plea, the finding of contrition, his addiction, and his progress in drug rehabilitation. The sentence was then reduced by 25 per cent for his plea of guilty to the other four offences. A sentence of 18 months to two years was imposed for these. Mr Markarian then appealed to the High Court.

The High Court held that sentencing judges should exercise as much flexibility in sentencing as would accord with consistency of approach and with the applicable statutory regime. It agreed that sentencing judges should explain the factors in each case which influenced the final sentence. The Court however held that the CCA's approach of starting with a maximum penalty based on the quantity of the drug alone and then making proportional deductions from it, based on other factors in the case, was not appropriate. The number and complexity of factors which Judge Hosking had had to weigh did not lend themselves to the arithmetical process used by the CCA. A majority of the Court stated that the preferable approach to sentencing is by "instinctive synthesis", whereby the sentencing judge weighs all the competing factors and arrives at one final sentence, as opposed to an approach whereby the judge quantifies the individual factors leading to a final determination.

The Court unanimously allowed the appeal and remitted the matter to the CCA for its reconsideration of the sentence in accordance with its reasons for judgment.

- *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.*