



HIGH COURT OF AUSTRALIA

Public Information Officer

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MATTHEW JAMES ELLIOTT v THE QUEEN BRONSON MATTHEW BLESSINGTON v THE QUEEN

The High Court of Australia today refused Mr Elliott and Mr Blessington leave to reopen their 1992 appeal and held that a recommendation that they never be released did not give them grounds to appeal against their life sentences.

The two men, along with Stephen Jamieson, were convicted in the NSW Supreme Court in 1990 in relation to the abduction, rape and murder of 20-year-old bank teller Janine Balding in Sydney on 8 September 1988. Mr Elliott was 16, Mr Blessington 14, and Mr Jamieson 22 at the time of the murder. Justice Peter Newman jailed the three for life and recommended that they never be released. At the time, such a recommendation had no legal effect. The Court of Criminal Appeal (CCA) in 1992 dismissed appeals by Mr Elliott and Mr Blessington against the severity of their sentences. The final orders made those appeals were not perfected (properly finalised), and in 2006, they brought another appeal to the CCA in which they sought to have the sentences imposed by Justice Newman quashed and to be resentenced in light of subsequent changes to sentencing laws. The CCA dismissed the appeal, but Justice David Kirby, in dissent, would have resentenced them to 28 years' jail with a non-parole period of 21 years. They appealed to the High Court.

Mr Elliott and Mr Blessington argued that Justice Newman's recommendation had legal effect upon their punishment and it could then have been the subject of an appeal against sentence. They also argued that, in any event, the treatment of the recommendation by later legislation gave it the status of an order made by the trial court against which they could appeal.

The High Court unanimously dismissed their appeals. It held that the non-release recommendation did not have the character of an order by the trial court against which an appeal against sentence would lie. The Court also rejected the submission regarding the effect of subsequent legislation. Any subsequent legal effect resulting from Justice Newman's recommendation was a matter of legislation, not judicial power. The High Court held that the recommendation never was and did not subsequently acquire the character of an order made by the trial court, with the result that the CCA was correct to dismiss the 2006 appeal.

Although the orders made in the 1992 appeal had not been perfected, the High Court held that the CCA was correct to refuse to grant leave to reopen the 1992 decision. Subsequent legislation affecting the position of Mr Elliott and Mr Blessington did not create any miscarriage of justice in the 1992 CCA decision which would call for interference in that decision. The 1992 decision did not proceed upon any misapprehension of the relevant law, and there was no other reason to reopen the case.

- *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.*