



HIGH COURT OF AUSTRALIA

Manager, Public Information

7 July 2009

JONATHAN PETER BAKEWELL v THE QUEEN

[2009] HCA 24

Today the High Court determined that section 19 of the *Sentencing (Crime of Murder) and Parole Reform Act 2003 (NT)*, relied on by the Director of Public Prosecutions for the Northern Territory (“the Director”) in an application to the Supreme Court of the Northern Territory to have Mr Bakewell’s non-parole period fixed at 25 years, does not apply to Mr Bakewell.

In 1989 Mr Bakewell was convicted on charges of aggravated unlawful entry, aggravated sexual assault, stealing, and murder. As the law then stood in the Northern Territory the only sentence that could be imposed for murder was imprisonment for life, with no minimum term able to be fixed. Mr Bakewell was sentenced to life imprisonment.

The *Sentencing (Crime of Murder) and Parole Reform Act 2003 (NT)* (“the 2003 Reform Act”) commenced in 2004. Section 18 of the 2003 Reform Act deemed Mr Bakewell’s sentence to include a 20 year non-parole period. Section 19 provided that the Supreme Court may, or in certain circumstances, must revoke the 20 year non-parole period and fix a longer period or no period on the application of the Director.

After the commencement of the 2003 Reform Act but before the Director had made an application Mr Bakewell was transferred to South Australia and has remained in custody in that State.

In 2007 the Director sought to have Mr Bakewell’s minimum term fixed at 25 years, pursuant to section 19 of the 2003 Reform Act. The primary judge allowed the Director’s application but the Court of Criminal Appeal of the Northern Territory overturned the decision. Following the appeal, an Act was passed (“the 2008 Amendment Act”) which amended the 2003 Reform Act.

The Director made a second application to fix Mr Bakewell’s non-parole period, relying on the 2008 Amendment Act. Mr Bakewell challenged the constitutional validity of section 19 of the 2003 Reform Act, as amended by the 2008 Amendment Act. A majority of the Full Court of the Supreme Court of the Northern Territory rejected his constitutional challenge. The High Court granted Mr Bakewell leave to appeal against the Full Court’s decision.

In a unanimous decision the High Court considered that, by the operation of prisoner transfer legislation applicable in the Northern Territory and South Australia at the time Mr Bakewell was transferred to South Australia, three outcomes resulted: the life sentence imposed on him in the Northern Territory ceased to have effect in the Territory; a life sentence was deemed to have been imposed on him by the Supreme Court of South Australia; and the 20 year non-parole period fixed under Northern Territory legislation was deemed to have been fixed by the Supreme Court of South Australia. From the date of Mr Bakewell’s transfer to South Australia the Supreme Court of the Northern Territory had no authority to revoke his 20 year non-parole period, or to fix a 25 year non-parole period.

The Court determined it was unnecessary to answer four of the five questions posed by the parties concerning the constitutional validity of the 2003 Reform Act as amended by the 2008 Amendment Act and other matters. The fifth question asked whether section 19 of the Reform Act, as amended, applied to Mr Bakewell. The Court determined that it did not.

- *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.*