



HIGH COURT OF AUSTRALIA

5 June 2013

ROBERT AGIUS v THE QUEEN [2013] HCA 27

Today the High Court unanimously dismissed Mr Robert Agius' appeal against his conviction in the Supreme Court of New South Wales for conspiring to dishonestly cause a loss to the Commonwealth, contrary to s 135.4(5) of the *Criminal Code* (Cth) ("the Code").

Mr Agius was charged with two counts of conspiracy. Both arose out of a single scheme to defraud the Commonwealth of taxation revenue which began in 1997 and continued until 2006. The first count alleged that he conspired with others to defraud the Commonwealth, contrary to ss 86(1) and 29D of the *Crimes Act* 1914 (Cth) ("the Crimes Act"), between 1 January 1997 and 23 May 2001. The second count alleged that he conspired with others to dishonestly cause a loss to the Commonwealth, contrary to s 135.4(5) of the Code, between 24 May 2001 and 23 October 2006. Mr Agius was charged with two separate counts because the relevant provision of the Crimes Act was repealed with effect from 24 May 2001. From 24 May 2001, the offence of conspiracy to defraud the Commonwealth was contained exclusively in s 135.4 of the Code.

Mr Agius was convicted of both counts. By special leave, he sought to appeal to the High Court against his conviction on the second count. In this Court, he argued that the conduct criminalised by s 135.4(5) of the Code was the formation of a conspiratorial agreement. Mr Agius contended that he should not have been convicted on the second count because he had not entered into a second agreement after s 135.4(5) commenced. He also argued that the offence in s 135.4(5) could not be satisfied by his participation in an existing conspiratorial agreement, otherwise the section would be given retrospective effect.

The High Court unanimously dismissed the appeal. The Court held that the offence in s 135.4(5) of the Code required the existence of, and participation in, an agreement. But the agreement did not need to be formed after s 135.4(5) commenced. Mr Agius' continued participation in the agreement was capable of constituting the offence. The Court also held that, because Mr Agius' offence was his continued participation in the conspiratorial agreement after s 135.4(5) commenced, the provision did not operate retrospectively.

- *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.*