



HIGH COURT OF AUSTRALIA

16 December 2014

HENDERSON v STATE OF QUEENSLAND

[2014] HCA 52

Today the High Court, by majority, dismissed an appeal against a decision of the Court of Appeal of the Supreme Court of Queensland and held that the appellant, who applied for the exclusion of certain property from forfeiture under the *Criminal Proceeds Confiscation Act 2002 (Q)* ("the Act"), had failed to discharge the onus placed upon him by s 68(2)(b) of the Act.

The appellant was found by the police in possession of cash to the value of \$598,325 ("the property"). The property was the proceeds of the sale of jewellery given to the appellant by his now deceased father. On the application of the State of Queensland under s 28(3)(a) of the Act, the Supreme Court made a restraining order under s 31(1) in relation to the property. The State made a further application to the Supreme Court under s 56(1) seeking the forfeiture of the property. Section 58(1)(a) provided that the Supreme Court must make a forfeiture order if the court finds it more probable than not that, for property restrained on an application made under s 28(3)(a), the respondent to the application had engaged in a serious crime related activity during the six year period prior to the application. The appellant had engaged in such an activity during that period.

The appellant applied under s 65(2) of the Act for an order excluding the property from forfeiture. Section 68(2)(b) provided that the Supreme Court must, and may only, make an exclusion order if it was satisfied that it was more probable than not that the property to which the application related was not illegally acquired property.

The primary judge dismissed the exclusion application. On the hearing of the application, the appellant gave evidence that he had been told by his father that the jewellery had been a gift to the appellant's great grandfather from Russian royalty. The primary judge found that that account of the provenance of the jewellery could not be true, with the consequence that it was not known how the appellant's father had come into possession of the jewellery. On that basis, his Honour held that the appellant had been unable to establish that the jewellery was not illegally acquired property. The term "illegally acquired property" was defined in s 22(2)(a) of the Act to include all or part of the proceeds of dealing with illegally acquired property. It followed that the property the subject of the exclusion application had not been shown, on the balance of probabilities, not to be illegally acquired property. An appeal to the Court of Appeal was dismissed.

By special leave, the appellant appealed to the High Court. The Court unanimously rejected the appellant's contention that, in order to satisfy the requirements of s 68(2)(b) of the Act, he needed to prove no more than that the jewellery was not the proceeds of any illegal activity on his part. Rather, it was necessary for the appellant to satisfy the Supreme Court that it was more probable than not that the jewellery was not illegally acquired in his father's hands. By majority, the Court concluded that the appellant had failed to discharge that onus.

- *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.*