



HIGH COURT OF AUSTRALIA

5 August 2015

SMITH v THE QUEEN

[2015] HCA 27

Today the High Court unanimously held that the appellant was not denied procedural fairness when the trial judge who had been informed of a jury's interim votes for and against conviction did not disclose those votes or the voting pattern to counsel.

The appellant was tried on one count of rape in the District Court of Queensland in February 2014. During its deliberations, the jury sent three notes to the trial judge. The trial judge disclosed to counsel the precise contents of the first two notes.

The jury's third note indicated that the jury could not agree on a unanimous verdict. It also stated two iterations of the jury's interim votes for and against conviction. The trial judge informed counsel that the jury could not agree and that the note contained the jury's interim voting patterns, but decided not to disclose the interim votes or voting patterns to counsel. Neither counsel objected.

At this point, the judge proposed to permit the jury to consider a majority verdict. Under s 59A of the *Jury Act* 1995 (Q) ("the Jury Act"), a trial judge has a discretion to permit a jury to return a majority verdict if, after a prescribed period of deliberation, the judge is satisfied that the jury is unlikely to reach a unanimous verdict. A trial judge also has a discretion to discharge a jury at any time under s 60 of the Jury Act.

The trial judge asked the jury if further time for deliberation would assist the jury to return a majority verdict. The jury indicated that it might. Accordingly, the trial judge permitted the jury to retire to consider a majority verdict. Neither counsel objected. The jury subsequently returned a guilty verdict by a majority of 11 to 1.

The appellant appealed against his conviction to the Court of Appeal of the Supreme Court of Queensland. He contended that he was denied procedural fairness when the judge failed to disclose the precise contents of the jury's third note. He argued that the jury's interim voting patterns were relevant to the trial judge's discretion either to allow a majority verdict or to discharge the jury, and so ought to have been disclosed to counsel. The Court of Appeal dismissed the appellant's appeal. By grant of special leave, the appellant appealed to the High Court.

The High Court unanimously dismissed the appeal, holding that there was no denial of procedural fairness. Procedural fairness requires that a trial judge disclose to counsel all information available to the trial judge but not available to counsel, where that information is relevant to an issue before the court. However, the jury's interim votes and voting patterns were not and could not be relevant to an issue before the court because of the protean and changeable character of the jury's deliberations. Nothing in the Jury Act otherwise made the interim votes and voting patterns relevant.

- *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.*