



HIGH COURT OF AUSTRALIA

31 August 2016

NH v THE DIRECTOR OF PUBLIC PROSECUTIONS; JAKAJ v THE DIRECTOR OF PUBLIC PROSECUTIONS; ZEFI v THE DIRECTOR OF PUBLIC PROSECUTIONS; STAKAJ v THE DIRECTOR OF PUBLIC PROSECUTIONS

[2016] HCA 33

Today the High Court unanimously allowed four appeals from the Full Court of the Supreme Court of South Australia. The High Court held that the Full Court did not have power to look behind the verdicts delivered by the foreperson of the jury, in open court in the sight and hearing of the other jurors without any dissent or action by them, to quash the appellants' acquittals of murder and convictions of manslaughter.

The appellants were jointly charged with murder and tried before a judge and a jury in the Supreme Court of South Australia. In summing up, the trial judge directed the jury that they could deliver one of three verdicts in respect of each accused: guilty of murder, guilty of manslaughter or not guilty. Her Honour also directed the jury that a verdict of guilty of murder had to be unanimous, but any other verdict, including not guilty of murder, could be by a majority of 10 or more after four hours of deliberation. In returning verdicts, the foreperson, in answer to questions from the judge's associate, reported that the jury found each of the appellants not guilty of murder but guilty of manslaughter. Later that day, the foreperson reported to a court officer that he had mistakenly told the Court that at least 10 members of the jury had agreed on verdicts of not guilty of murder. Statements were taken from the foreperson and each of the other members of the jury. Parts of those statements appeared to indicate that there had not been a majority of 10 or more in favour of a verdict of not guilty of murder in relation to any of the appellants.

The Director of Public Prosecutions ("DPP") applied to the Supreme Court for orders to quash of all of the verdicts and for a retrial of each of the appellants on the charge of murder. A majority of the Full Court made the orders sought by the DPP. In the majority's view, s 57(3) of the *Juries Act 1927* (SA) required the jury to reach a verdict that the accused was not guilty of murder, unanimously or by majority, before it could reach a verdict as to the alternative offence of manslaughter. The foreperson's mistake in announcing the verdicts was said by the majority of the Full Court to have amounted to a material irregularity resulting in unlawful verdicts under s 57 of the *Juries Act*. That enlivened an inherent power, within the Court's inherent jurisdiction to prevent the abuse of its processes, to overturn the verdicts of acquittal and order a re-trial. By grant of special leave, the appellants appealed to the High Court.

The High Court unanimously allowed each appeal. The High Court held that the verdicts delivered by the foreperson, without dissent or correction by the jury, later translated by the trial judge into perfected judgments of acquittal and conviction, were beyond the power of the Court to amend or set aside in an exercise of inherent power. Given that the jury's verdicts could not be impugned, there was no basis for receiving into evidence affidavits containing their statements about their deliberations.

- *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.*