



HIGH COURT OF AUSTRALIA

10 November 2021

JONG HAN PARK v THE QUEEN
[2021] HCA 37

Today the High Court unanimously dismissed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales. The appeal concerned the correct interpretation of s 22 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) ("the Sentencing Act"), which prescribes how certain courts are required to take into account an offender's guilty plea in passing sentence. Section 22(1) relevantly provided that if an offender has pleaded guilty the court may impose a lesser penalty "than it would otherwise have imposed".

The appellant pleaded guilty and was sentenced in the District Court of New South Wales to an aggregate sentence of imprisonment of 11 years, with a non-parole period of eight years, for multiple offences including the offence of taking a conveyance without the consent of the owner contrary to s 154A(1)(a) of the *Crimes Act 1900* (NSW) ("the offence"). The maximum penalty for the offence was five years' imprisonment but, because it was dealt with as a "related offence" in accordance with s 165 of the *Criminal Procedure Act 1986* (NSW), the District Court's sentencing power was limited to the maximum penalty of two years' imprisonment that the Local Court could have imposed for the offence ("the jurisdictional limit").

As the sentencing judge imposed an aggregate sentence, his Honour was required by s 53A of the Sentencing Act to indicate the sentence that would have been imposed had separate sentences been imposed. The sentencing judge indicated a sentence of two years' imprisonment for the offence and noted that a 25% discount had been applied to the sentence that would otherwise have been imposed to reflect the utility of the appellant's early plea of guilty. Therefore, but for the appellant's guilty plea, the sentencing judge's indicative sentence would have been two years and eight months' imprisonment, being a sentence in excess of the jurisdictional limit. The appellant argued that this was not a sentence the sentencing judge "would otherwise have imposed" within the meaning of s 22(1) of the Sentencing Act because, by reason of the jurisdictional limit, it was not a sentence that the court could impose.

The High Court rejected the appellant's construction of s 22(1) of the Sentencing Act and held that the sentence that the court "would otherwise have imposed" is the appropriate sentence determined in accordance with the Sentencing Act and without regard to any jurisdictional limit. Any relevant jurisdictional limit should be applied by the sentencing judge after the judge has determined the appropriate sentence for an offence in accordance with s 21A of the Sentencing Act. A jurisdictional limit relates to the sentencing court, not to the task of identifying and synthesising the relevant factors that are weighed to determine the appropriate sentence.

- *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.*