



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

FRANK SAMUEL FARRUGIA

Appellant

and

THE KING

Respondent

**INTERVENER'S
OUTLINE OF ORAL SUBMISSIONS**

PART I: INTERNET PUBLICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

Materiality

2. The jurisdiction of the New South Wales Court of Criminal Appeal (CCA), and the powers necessary for its exercise, are creatures of statute: *Criminal Appeal Act 1912* (NSW), ss 5(1)(c), 6(3) (Joint Book of Authorities (JBA) vol 1, tab 3 at 15-16, 27).
3. The CCA's power to intervene with respect to a sentence under appeal is not enlivened unless error is established:
 - a. *Betts v The Queen* (2016) 258 CLR 420 (**Betts**) at [10] per French CJ, Kiefel, Bell, Gageler and Gordon JJ (JBA vol 2, tab 5 at 88-89);
 - b. *Kentwell v The Queen* (2014) 252 CLR 601 (**Kentwell**) at [35], [43] per French CJ, Hayne, Bell and Keane JJ (JBA vol 2, tab 6 at 116, 119).

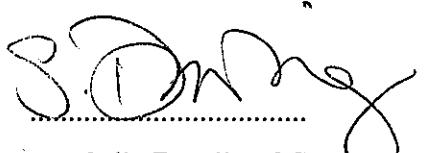
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4. The ultimate focus of s 6(3) is whether the sentence imposed was “warranted in law”: *Kentwell* at [42] (JBA vol 2, tab 6 at 118-119). Consistently with *Kentwell*, the identification of relevant error requires a conclusion that the exercise of the sentencer’s discretion has been vitiated by the error. If such error is established, the obligation to exercise the sentencing discretion afresh is engaged: Intervener’s Submissions at [14].
5. No further question as to the materiality of the error is required: *Kentwell* at [33], [35], [38], [41]-[44] (JBA vol 2, tab 6 at 115-120); Intervener’s Submissions at [9]-[12]; cf Respondent’s Submissions at [13].
6. In re-exercising the sentencing discretion, the CCA has sufficient flexibility to ensure fairness: *Betts* at [2] (JBA vol 2, tab 5 at 86); Intervener’s Submissions at [16]-[17].

Remittal

7. Section 6(3) allows of two possibilities: the CCA dismisses the appeal or the CCA imposes a sentence in substitution for that under appeal.
8. Section 12(2) is not a free-standing power to resolve an appeal, which offers an alternative to s 6(3): Intervener’s Submissions at [21]-[22], [25]; cf Appellant’s Submissions at [52].
 - a. Explanatory Note to Criminal Appeal (Amendment) Bill 1987 (NSW) (JBA vol 4, tab 22 at 570).
 - b. Second Reading Speech for Criminal Appeal (Amendment) Bill 1987 (NSW), Legislative Assembly, Hansard, 17 November 1987 at 16088-16089 (JBA vol 4, tab 23 at 574-575).

Dated: 11 February 2026



Sally Dowling SC