HIGH COURT OF AUSTRALIA

FRENCH CJ,
GUMMOW, HAYNE, HEYDON, CRENNAN, KIEFEL AND BELL JJ

JONATHAN PETER BAKEWELL APPELLANT

AND

THE QUEEN RESPONDENT

Bakewell v The Queen [2009] HCA 24
7 July 2009
D5/2009

ORDER

1. Appeal allowed.

2. Set aside the orders of the Full Court of the Supreme Court of the Northern Territory made on 11 December 2008 and, in lieu thereof, order that the questions referred to that Court be answered as follows:

***Question 1**: Is subs 19(3), subs 19(7) and/or subs 19(9) of the* Sentencing (Crime of Murder) and Parole Reform Act *2003 (NT) (as amended) ("the Act") invalid in its application to Bakewell because:*

(a) it infringes the principle in Kable v Director of Public Prosecutions (NSW) *(1996) 189 CLR 51; or*

(b) it otherwise constitutes an unwarranted interference with the judicial power of the Supreme Court of the Northern Territory?

***Answer**: Unnecessary to answer.*

***Question 2**: Does the Director's application made under subs 19(9) of the Act on 26 May 2008 ("application") constitute a contempt of the Supreme Court of the Northern Territory?*

***Answer**: Unnecessary to answer.*

Question 3: *Should the proceedings commenced by the application be permanently stayed because they:*

(a) are oppressive?

(b) are scandalous, frivolous or vexatious?

(c) constitute an abuse of process of the Supreme Court of the Northern Territory?

Answer: *Unnecessary to answer.*

Question 4: *Does s 19 of the Act (as amended) apply to Bakewell?*

Answer: *No.*

Question 5: *Should Bakewell's non-parole period of 20 years set by s 18 of the Act (as amended) be revoked and replaced with a non-parole period of 25 years?*

Answer: *Unnecessary to answer.*

On appeal from the Supreme Court of the Northern Territory

Representation

M L Abbott QC with I L Read for the appellant (instructed by Legal Aid Commission)

M P Grant QC, Solicitor-General for the Northern Territory with S L Brownhill for the respondent (instructed by Solicitor for the Northern Territory)

Interveners

S J Gageler SC, Solicitor-General of the Commonwealth with N M Wood intervening on behalf of the Attorney-General of the Commonwealth (instructed by Australian Government Solicitor)

R J Meadows QC, Solicitor-General for the State of Western Australia with C L Conley intervening on behalf of the Attorney-General for the State of Western Australia (instructed by State Solicitor for Western Australia)

M G Sexton SC, Solicitor-General for the State of New South Wales with J G Renwick intervening on behalf of the Attorney-General for the State of New South Wales (instructed by Crown Solicitor (NSW))

P M Tate SC, Solicitor-General for the State of Victoria with S P Donaghue intervening on behalf of the Attorney-General for the State of Victoria (instructed by Victorian Government Solicitor)

M G Hinton QC, Solicitor-General for the State of South Australia with S A McDonald intervening on behalf of the Attorney-General for the State of South Australia (instructed by Crown Solicitor for the State of South Australia)

CATCHWORDS

Bakewell v The Queen

Criminal law – Punishment – Appellant sentenced in 1989 to mandatory life imprisonment for murder – *Sentencing (Crime of Murder) and Parole Reform Act* 2003 (NT), s 18(a) deemed sentence to include 20 year non-parole period – Section 19 provided Supreme Court of the Northern Territory may or, in certain circumstances, must revoke deemed non-parole period and fix longer period or no period on application of Director of Public Prosecutions – Appellant transferred to South Australia before Director made application for longer non-parole period – Upon transfer, Northern Territory sentence ceased to have effect but same sentence deemed to have been imposed by South Australian court – Whether Supreme Court of Northern Territory may determine application – Whether appellant "prisoner" within meaning of Act.

Criminal law – Transfer of prisoners – Interaction of *Prisoners (Interstate Transfer) Act* 1982 (SA) and *Prisoners (Interstate Transfer) Act* (NT) – Whether application to Supreme Court of the Northern Territory was for "review" of sentence or minimum term.

Words and phrases – "prisoner", "review".

Prisoners (Interstate Transfer) Act 1982 (SA), ss 5, 25, 27, 28.
Prisoners (Interstate Transfer) Act (NT), ss 3, 23, 26.
Sentencing (Crime of Murder) and Parole Reform Act 2003 (NT), Pt 5, Div 1.
Sentencing (Crime of Murder) and Parole Reform Amendment Act 2008 (NT).
Interpretation Act (NT), s 38(1)(b).

1 FRENCH CJ, GUMMOW, HAYNE, HEYDON, CRENNAN, KIEFEL AND BELL J. The determinative question in this appeal from the Full Court of the Supreme Court of the Northern Territory is whether the Supreme Court of the Northern Territory may revoke a non-parole period fixed in respect of a person sentenced to life imprisonment for murder, and fix a new non-parole period, after the prisoner has been transferred to South Australia under the *Prisoners (Interstate Transfer) Act* (NT) ("the NT Transfer Act"). That question should be answered in the negative.

2 The question identified as determinative of the present appeal was not agitated in the Full Court of the Supreme Court of the Northern Territory but had been considered[1] in earlier proceedings concerning the appellant. The Full Court (B R Martin CJ and Riley J, Thomas J dissenting) answered[2] questions referred by the Chief Justice about the validity of provisions of the *Sentencing (Crime of Murder) and Parole Reform Act* 2003 (NT) ("the 2003 Reform Act") as amended by the *Sentencing (Crime of Murder) and Parole Reform Amendment Act* 2008 (NT) ("the 2008 Amendment Act").

3 The provisions whose validity was in issue were relied on by the Director of Public Prosecutions for the Northern Territory ("the Director") as requiring the Director to apply to the Supreme Court for revocation of the non-parole period of 20 years fixed in respect of the appellant by s 18(a) of the 2003 Reform Act and obliging the Court, in the appellant's case, to revoke that non-parole period and instead, either fix no non-parole period or fix a non-parole period of at least 25 years. The appellant challenged the validity of these provisions, contending that the principle established in *Kable v Director of Public Prosecutions (NSW)*[3] was engaged. By majority, the Full Court rejected the appellant's challenge. By special leave, the appellant appealed to this Court against the orders of the Full Court answering the referred questions in favour of the validity of the impugned provisions.

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1 *DPP v Bakewell* (2007) 21 NTLR 171.

2 *Bakewell v The Queen [No 3]* (2008) 22 NTLR 174.

3 (1996) 189 CLR 51; [1996] HCA 24.

4 An essential premise for the arguments about validity was that the 2003 Reform Act, as amended by the 2008 Amendment Act, authorised the Supreme Court of the Northern Territory to decide the Director's application for revocation of the non-parole period of 20 years that, by operation of s 18(a) of the 2003 Reform Act, had been fixed in respect of the appellant before his transfer from the Northern Territory to South Australia on 15 April 2005.

5 It appeared to this Court that the premise may be open to doubt. The Court asked the parties (and the Attorney-General for South Australia, who had intervened in the appeal) to address the correctness of the premise before the Court embarked upon any consideration of the constitutional issues which the appellant had raised below. Leave was granted to the appellant to amend his notice of appeal to challenge the premise identified. Because the premise for the arguments about constitutional validity is not correct, it is not necessary to consider the constitutional issues.

6 There are two related, but distinct, bases for concluding that, after the appellant's transfer to South Australia, the Supreme Court of the Northern Territory did not have authority to revoke the non-parole period of 20 years fixed by the 2003 Reform Act and either refuse to fix a non-parole period or fix a period of at least 25 years. The first depends upon the construction and application of the NT Transfer Act and equivalent South Australian legislation, the *Prisoners (Interstate Transfer) Act* 1982 (SA) ("the SA Transfer Act"); the other depends upon the construction and application of the 2003 Reform Act.

7 These reasons will show that, by operation of the NT Transfer Act and the SA Transfer Act, from the time the appellant arrived in South Australia: (a) the life sentence of imprisonment imposed upon him by the Supreme Court of the Northern Territory ceased to have effect in the Territory[4]; (b) a life sentence was deemed[5] to have been imposed on the appellant by the Supreme Court of South Australia; and (c) the minimum term of 20 years fixed before the appellant's transfer to South Australia by operation of s 18(a) of the 2003 Reform Act, as the

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4 *Prisoners (Interstate Transfer) Act* (NT) ("the NT Transfer Act"), s 23(1).

5 *Prisoners (Interstate Transfer) Act* 1982 (SA) ("the SA Transfer Act"), s 27(1)(a).

term during which the appellant was not eligible to be released on parole, was deemed[6] to have been fixed by the Supreme Court of South Australia.

8 The two Transfer Acts provided for some limited exceptions to the generality of the three propositions just stated. In particular, the NT Transfer Act's provision[7], that upon the appellant's arrival in South Australia the life sentence imposed on him by the Supreme Court of the Northern Territory ceased to have effect, was subject to an exception "for the purpose of an appeal against or review of" a sentence. And the SA Transfer Act provided[8] for cases where a minimum term deemed to have been fixed by a corresponding court of South Australia was varied "on a review by or appeal to a court" of the transferring jurisdiction.

9 These reasons will show that the Director's application was not for a review by a court of the Northern Territory of the minimum term fixed in respect of the appellant[9]. The sentence imposed on the appellant in the Northern Territory having ceased to have effect in the Territory, no order fixing a new non-parole period in respect of the appellant could be made by the Supreme Court of the Northern Territory under the 2003 Reform Act.

10 These reasons will further show that no such order could be made because the 2003 Reform Act could be engaged only in respect of a prisoner who met two criteria. First, it was necessary[10] that, at the commencement of the 2003 Reform Act, the subject of the application, here the appellant, was serving a sentence of imprisonment for life for the crime of murder (which is to say a sentence imposed and then being served in accordance with the law of the Northern Territory). The appellant met this criterion. Secondly, however, it was necessary that he be a person who at the time of the application (perhaps also the order, but

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6 SA Transfer Act, s 28(1).

7 s 23(1).

8 s 28(2).

9 SA Transfer Act, s 28(2); NT Transfer Act, s 23(1)(a).

10 *Sentencing (Crime of Murder) and Parole Reform Act* 2003 (NT), ("the 2003 Reform Act"), s 17.

it is not necessary to decide this) was a "prisoner". The appellant did not meet this second criterion. At the time the Director made the application from which the present appeal arises, the appellant was serving in South Australia a sentence deemed to have been imposed on him by the law of South Australia. He was no longer serving a sentence under or in accordance with the law of the Northern Territory. He was not a "prisoner" for the purposes of the 2003 Reform Act.

Circumstances giving rise to this appeal

11 It is not necessary to describe in any detail the facts which led to the appellant being sentenced to life imprisonment. It is enough to record only the following matters.

12 In April 1989, an indictment was filed in the Supreme Court of the Northern Territory charging the appellant with aggravated unlawful entry of a dwelling house[11], aggravated sexual assault[12], murder[13] and stealing[14]. He pleaded not guilty to the charge of murder but guilty to the other three charges. At trial on the count of murder, the appellant was found guilty. On 26 May 1989, Kearney J sentenced the appellant to life imprisonment on the count of murder and to various determinate terms of imprisonment on the counts to which the appellant had pleaded guilty. The determinate sentences imposed for offences other than murder have all now expired. As the law stood at the time Kearney J sentenced the appellant, the only sentence that could be passed on the appellant for the crime of murder was imprisonment for life. No minimum term of imprisonment could be fixed.

13 The 2003 Reform Act came into force on 11 February 2004. It amended the *Sentencing Act* (NT) to provide, among other things, that on passing the mandatory sentence of life imprisonment for murder a sentencing judge may, but in certain circumstances need not, fix a minimum term to be served before being eligible for parole.

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11 Contrary to s 213 of the *Criminal Code* (NT).

12 Contrary to s 192 of the *Criminal Code*.

13 Contrary to s 162 of the *Criminal Code*.

14 Contrary to s 210 of the *Criminal Code*.

14 Division 1 of Pt 5 (ss 17-21) of the 2003 Reform Act made transitional provisions for prisoners who had been sentenced to life imprisonment for murder before provision was made for fixing a minimum term to be served before being eligible for parole. Section 17 of the 2003 Reform Act provided that Div 1 of Pt 5 applied to prisoners who, at the commencement of the Act, were serving a sentence of imprisonment for life for the crime of murder. Section 18 provided that, subject to Div 1 of Pt 5,

> "(a) the prisoner's sentence is taken to include a non-parole period of 20 years; or
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> (b) if the prisoner is serving sentences for 2 or more convictions for murder – each of the prisoner's sentences is taken to include a non-parole period of 25 years,
>
> commencing on the date on which the sentence commenced".

15 Section 19 permitted the Supreme Court of the Northern Territory, on the application of the Director, to revoke the non-parole period fixed by s 18 in respect of a prisoner and either fix a longer non-parole period or refuse to fix a non-parole period. Section 19(2) provided that the Director must make the application:

> "(a) not earlier than 12 months before the first 20 years of the prisoner's sentence is due to expire; or
>
> (b) if, at the commencement of this Act, that period has expired – within 6 months after that commencement".

Section 19(3) of the 2003 Reform Act provided that, subject to some qualifications which are not immediately relevant, on application by the Director, "the Supreme Court must fix a non-parole period of 25 years" if, among other things:

> "the act or omission that caused the victim's death was part of a course of conduct by the prisoner that included conduct, either before or after the victim's death, that would have constituted a sexual offence against the victim".

16 The 20 year non-parole period fixed in respect of the appellant by operation of s 18(a) of the 2003 Reform Act was due to expire in February 2008. In June 2007 the Director of Public Prosecutions applied to the Supreme Court of the Northern Territory, under s 19(1) of the 2003 Reform Act, for an order revoking the period of 20 years fixed by s 18(a) and seeking an order that a non-parole period of 25 years be fixed in respect of the appellant.

17 In deciding that application, the primary judge (Southwood J) concluded[15] that s 19(3) of the 2003 Reform Act was engaged and that he was bound to fix the period of 25 years as the period before the appellant was to be eligible for parole. The appellant appealed to the Court of Criminal Appeal of the Northern Territory against this order and that Court (B R Martin CJ, Thomas and Riley JJ) allowed[16] the appeal, set aside the order of Southwood J and in its place ordered that the Director's application to the Supreme Court of the Northern Territory be dismissed. It did so on the basis that Southwood J had not been bound to find as he did, but possessed a discretion in the matter.

18 After the 2003 Reform Act came into operation, but before the Director made the application that has just been mentioned, the appellant was transferred to South Australia. The appellant has remained in custody in South Australia thereafter. He was, therefore, in custody in South Australia at the time the Director, relying on provisions inserted in the 2003 Reform Act by the 2008 Amendment Act, made a second application to the Supreme Court of the Northern Territory for revocation of the non-parole period of 20 years and fixing of a non-parole period of 25 years. It is in this second application that questions were referred for the opinion of the Full Court of the Supreme Court.

Construction and application of the Transfer Acts

19 Section 23(1) of the NT Transfer Act (as in force at the time of transfer and at the time of both the Director's first and second applications concerning the appellant) provided:

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15 *DPP v Bakewell* [2007] NTSC 51.

16 *Bakewell v The Queen [No 2]* (2008) 22 NTLR 164.

"Where pursuant to an order of transfer a prisoner is conveyed to a participating State or another Territory specified in the order, then *from the time the prisoner arrives in the participating State* or that other Territory *every Territory sentence of imprisonment imposed upon the prisoner*, including a translated sentence, *ceases to have effect in the Territory* except –

(a) for the purpose of an appeal against or review of a conviction, finding of guilt, judgment or sentence made, imposed or fixed by a court of the Territory;

(b) in relation to a period of imprisonment served by the prisoner in the Territory; or

(c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default imprisonment originally imposed upon the prisoner by a court of the Territory." (emphasis added)

South Australia is a participating State.

20 The SA Transfer Act (again as in force at the times relevant to this matter) made provision for receiving prisoners transferred from another State or Territory under corresponding legislation. The hinge about which those provisions turned is what the SA Transfer Act referred to as a "translated sentence". That expression was defined in s 5(1) of the SA Transfer Act as "a sentence of imprisonment that is, by virtue of section 27, to be deemed to have been imposed on a person by a court of this State". As that definition indicates, s 27 of the SA Transfer Act provided:

"Where under an interstate law an order is issued for the transfer to South Australia of a person imprisoned in a participating State and the person is brought into South Australia pursuant to the order, then *from the time the person arrives in South Australia* –

(a) *any State sentence of imprisonment* (as defined in the interstate law of the participating State) imposed on the person by a court of the participating State and any sentence of imprisonment deemed by the provision of an interstate law that corresponds to this section to have been imposed by a court of the participating State *will be deemed to have been imposed on the person*; and

(b) any direction or order given or made by a court of the participating State with respect to when any such State sentence of imprisonment shall commence shall, so far as practicable, be deemed to have been given or made,

by a corresponding court of South Australia and, except as otherwise provided in this Act, shall be given effect to in South Australia, and the laws of South Australia shall apply, as if such a court had had power to impose the sentence and give or make the direction or order, if any, and did in fact impose the sentence and give or make the direction or order, if any." (emphasis added)

"State" was defined in s 5(1) to include the Northern Territory.

21 Section 28 of the SA Transfer Act contained ancillary provisions relating to translated sentences. In particular, s 28(1) of the SA Transfer Act provided that where under a law of a participating State a court fixed, in respect of a translated sentence, a minimum term to be served before being eligible for parole, "then, except as otherwise provided in [the SA Transfer Act], that minimum term shall be deemed likewise to have been fixed by the corresponding court of South Australia as a non-parole period". Section 5(3) of the SA Transfer Act deemed a sentence imposed by operation of an Act or other law of a State or Territory to have been imposed by a court of that State or Territory. It was not disputed that the non-parole period of 20 years taken to have been included in the appellant's sentence by operation of s 18(a) of the 2003 Reform Act was deemed by the SA Transfer Act to have been imposed by a court of the Northern Territory and thus a minimum term that engaged s 28(1).

22 Consistent with a proposition that informs much of the criminal law[17], the application of the provisions for interstate transfer of prisoners depends in important respects on where the prisoner is. In particular, the sentence that is served after transfer to another jurisdiction is a sentence that is deemed to have been imposed within that receiving jurisdiction; it is not the sentence originally imposed. The sentence originally imposed ceases to operate upon the prisoner from the time the prisoner arrives in the receiving jurisdiction[18].

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17 *Lipohar v The Queen* (1999) 200 CLR 485 at 527 [106]-[107]; [1999] HCA 65.

18 SA Transfer Act, s 25(1); NT Transfer Act, s 23(1).

23 It follows from the provisions of the Transfer Acts referred to thus far that, as stated at the outset of these reasons, from the time the appellant arrived in South Australia: (a) the life sentence imposed upon him by the Supreme Court of the Northern Territory ceased to have effect in the Territory; (b) a life sentence was deemed to have been imposed on him by the Supreme Court of South Australia; and (c) the non-parole period of 20 years fixed by operation of s 18(a) of the 2003 Reform Act was deemed to have been fixed by the Supreme Court of South Australia. The controversy between the parties in this Court concerning the operation of the Transfer Acts centred upon whether an exception to these general propositions was engaged. In particular, did the Director's application for revocation of the non-parole period of 20 years, and the fixing of a longer period, fall within s 28(2) of the SA Transfer Act and s 23(1)(a) of the NT Transfer Act?

24 Section 28(2) of the SA Transfer Act provided for cases where a minimum term deemed to have been fixed by a corresponding court of South Australia was varied, quashed or ceased to have effect. Section 28(2) provided:

> "Where a translated sentence or *a minimum term deemed* under subsection (1) *to have been fixed by a corresponding court of South Australia –*
>
> (a) *is varied* or quashed *on a review by or appeal to a court of the participating State where the sentence or minimum term was imposed or fixed*, the sentence or minimum term shall be deemed to have been varied to the same extent, or to have been quashed, by a corresponding court of South Australia; or
>
> (b) otherwise is varied or ceases to have effect as a result of action taken by any person or authority in that participating State, the sentence or minimum term shall be deemed to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in South Australia." (emphasis added)

The general provision made by s 23(1) of the NT Transfer Act, that from the time the appellant arrived in South Australia every Territory sentence of imprisonment imposed upon him ceased to have effect in the Territory, was subject to three exceptions, including that stated in par (a) ("for the purpose of an appeal against or review of a ... sentence made, imposed or fixed by a court of the Territory").

25 The respondent submitted that the application made under s 19 of the 2003 Reform Act was encompassed by s 23(1)(a) of the NT Transfer Act. More particularly, the respondent submitted that the application for revocation of a non-parole period fixed by operation of statute and the fixing of a longer non-parole period was an application for "review" of the appellant's sentence. The respondent submitted that, because it was a review, the appellant's sentence did not, to that extent, cease to have effect in the Territory and s 28(2) of the SA Transfer Act would be engaged, giving effect in South Australia to any variation ordered by the Supreme Court of the Northern Territory of the minimum term fixed in respect of the appellant.

26 Proceedings of the kind instituted by the Director against the appellant are not proceedings for a "review" of the non-parole period imposed upon the appellant by operation of s 18(a) of the 2003 Reform Act. The Director does not seek any reconsideration or re-examination of the sentence imposed by the sentencing judge or of that sentence as subsequently modified by statute. Rather, what is provided for by s 19 is the institution of a new and separate proceeding for the revocation of what has been fixed by law and a determination of the minimum term according to criteria distinct from, and additional to, the single criterion that engaged the imposition of a non-parole period under s 18(a): that, at the Act's commencement, the prisoner was serving a life sentence for murder.

27 It is to be noted that s 28(3) of the SA Transfer Act provided that:

> "Nothing in this Act operates to permit in South Australia any appeal against or review of any conviction, judgment, sentence or minimum term made, imposed or fixed in relation to a person by a court of a participating State."

But, contrary to the respondent's submissions, it does not follow from this provision that some larger or more extended meaning should be given to the notion of review by a court of the Northern Territory than the words would ordinarily bear.

28 Provisions of the Transfer Acts regulating translated sentences cast light on the work that is to be done by references in the legislation to the variation or quashing of a sentence on review by or appeal to a court of the transferring State. The general tenor of the provisions is that, but for proceedings by way of appeal against or review of the correctness of the sentence first imposed upon a prisoner

in the transferring jurisdiction, the custodial disposition of a prisoner who has been transferred is thereafter committed to the receiving jurisdiction. Although the transferring jurisdiction is expected to carry the processes of final determination of sentence and ancillary provisions like non-parole periods to conclusion, including if necessary by appeal or review, once the sentence has been set it is that sentence which will be served in the receiving jurisdiction.

29 Three elements of the Transfer Acts demonstrate this proposition. First, it may be noted that if a translated sentence is an indeterminate sentence requiring that the person be detained during the pleasure of Her Majesty or of the Governor of the transferring jurisdiction, it is the institutions of the receiving jurisdiction which determine whether and when the prisoner is to be released[19]. Secondly, under both Acts[20], it is the Executive of the receiving jurisdiction which may exercise the royal prerogative of mercy. Thirdly, and of most significance for the present matter, s 28(7) of the SA Transfer Act (for which there is no equivalent in the NT Transfer Act) provided:

> "A non-parole period in respect of a person subject to a translated sentence may be fixed, extended or reduced by the appropriate South Australian court on the application of the person subject to the sentence or the Crown."

The expression "the appropriate South Australian court" is defined in s 28(8) as "a court that is, in relation to the court by which the sentence was imposed, a corresponding court of South Australia".

30 The construction and application of s 28(7) in particular circumstances has been understood[21] as presenting some difficult questions. It is not necessary to examine those questions in this matter. It is enough to observe that s 28(7) is consistent with curial decisions of issues about eligibility for parole subsequent to the final determination of sentence by the courts of the transferring jurisdiction

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19 SA Transfer Act, s 28(4); NT Transfer Act, s 26(4).

20 SA Transfer Act, s 28(5); NT Transfer Act, s 26(5).

21 *Romeo* (1996) 89 A Crim R 149.

being confided to the courts of South Australia. As was said[22] in the Second Reading Speech for the Bill by which s 28(7) was introduced into the SA Transfer Act, the purpose of the provision was to place a prisoner transferred from interstate in the same position as a South Australian prisoner in relation to the fixing, extending or reducing of a non-parole period. In this respect, s 28(7) is consistent with the other provisions of s 28 that have been mentioned. And neither s 28(7) nor any of the other provisions of s 28 is consistent with giving the reference in either Act to review of a sentence a meaning that encompasses the proceedings instituted by the Director under s 19 of the 2003 Reform Act.

31 The references to an appeal against or review of a sentence or minimum term imposed direct attention to proceedings in which the correctness of the sentence passed or minimum term fixed is in issue. They are not terms apt to include fresh proceedings for the redetermination of a sentence or minimum term according to criteria that differ from those that were to be applied when that sentence or term was fixed.

32 It may be accepted that, as the respondent submitted, the legislation providing for interstate transfer of prisoners should as far as possible be interpreted as providing for neither advantage nor disadvantage to a prisoner on account of transfer. It does not follow, however, that those provisions of the Transfer Acts which refer to appeal against or review of sentence should be understood as including proceedings outside the ordinary processes of appellate review for redetermination of a sentence already passed on a prisoner.

33 The respondent and South Australia submitted that if the Director's application was not for a review and s 28(2)(a) of the SA Transfer Act was not engaged, s 28(2)(b) was. That submission depended upon treating the Supreme Court of the Northern Territory as falling within the expression "any person or authority in" the Territory. Given the contrasting language used in par (a) and par (b) of s 28(2), that construction of s 28(2)(b) should not be accepted. The Supreme Court of the Northern Territory is not a "person or authority" as that expression is used in s 28(2)(b).

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22 South Australia, House of Assembly, *Parliamentary Debates* (Hansard), 9 May 1984 at 4223.

34 For these reasons it follows that no order fixing a new non-parole period in respect of the appellant could be made by the Supreme Court of the Northern Territory.

Construction and application of the 2003 Reform Act

35 As noted at the start of these reasons, there is a related but distinct reason for reaching that conclusion. Upon his arrival in South Australia, the appellant ceased to be serving a sentence of life imprisonment under Northern Territory law. He was no longer a "prisoner" within the meaning of Div 1 of Pt 5 of the 2003 Reform Act. The term "prisoner" when used in those provisions should be understood[23] as meaning a prisoner serving a sentence under and in accordance with Northern Territory law.

36 In Acts of the Northern Territory legislature, "references to localities, jurisdictions and other matters and things shall be construed as references to such localities, jurisdictions and other matters and things in and of the Territory"[24]. That may well be reason enough to conclude that "prisoner" is to be understood as a prisoner "in and of" the Territory. It is to be recalled however, as noted earlier in these reasons, that s 23 of the NT Transfer Act provided that, as a general rule, a Northern Territory sentence ceased to have effect in the Territory upon the appellant's arrival in South Australia. Because the Director's application did not fall within the exception to that general rule provided by s 23(1)(a), it is only by reading the provisions of Div 1 of Pt 5 of the 2003 Reform Act as impliedly repealing s 23 of the NT Transfer Act to the extent necessary to permit dealing with a person who was not then subject to a Northern Territory sentence that the 2003 Reform Act could be engaged in the present matter.

37 To do that would require reading "prisoner" in Div 1 of Pt 5 as extending to a person who had been, but was no longer, serving a sentence under Northern Territory law. That step should not be taken. The term "prisoner" in Div 1 of

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23 cf *Grannall v C Geo Kellaway and Sons Pty Ltd* (1955) 93 CLR 36 at 52-53; [1955] HCA 5.

24 *Interpretation Act* (NT), s 38(1)(b).

Pt 5 should be given its natural meaning. The application made by the Director in respect of the appellant did not relate to a "prisoner".

Conclusion and orders

38 For these reasons, the appeal to this Court should be allowed. The orders of the Full Court of the Supreme Court of the Northern Territory made on 11 December 2008 should be set aside. In their place there should be orders that the questions referred to the Full Court be answered as follows:

Question 1 Is subs 19(3), subs 19(7) and/or subs 19(9) of the *Sentencing (Crime of Murder) and Parole Reform Act* 2003 (NT) (as amended) ("the Act") invalid in its application to Bakewell because:

(a) it infringes the principle in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51; or

(b) it otherwise constitutes an unwarranted interference with the judicial power of the Supreme Court of the Northern Territory?

Answer Unnecessary to answer.

Question 2 Does the Director's application made under subs 19(9) of the Act on 26 May 2008 ("application") constitute a contempt of the Supreme Court of the Northern Territory?

Answer Unnecessary to answer.

Question 3 Should the proceedings commenced by the application be permanently stayed because they:

(a) are oppressive?

(b) are scandalous, frivolous or vexatious?

(c) constitute an abuse of process of the Supreme Court of the Northern Territory?

Answer Unnecessary to answer.

Question 4 Does s 19 of the Act (as amended) apply to Bakewell?

Answer No.

Question 5 Should Bakewell's non-parole period of 20 years set by s 18 of the Act (as amended) be revoked and replaced with a non-parole period of 25 years?

Answer Unnecessary to answer.