

HIGH COURT OF AUSTRALIA

GLEESON J

THE KING

APPELLANT

AND

CEM BATAK

RESPONDENT

[2025] HCASJ 7

Date of Judgment: 7 February 2025

S148 of 2024

ORDER

- 1. The application dated 29 November 2024 for leave to file a Notice of Cross-Appeal is refused.*

Representation

The appellant is represented by Solicitor for Public Prosecutions (NSW)

The respondent is represented by Fahmy Lawyers

1 GLEESON J. By interlocutory application filed on 29 November 2024, the applicant, Cem Batak, who is the respondent in the substantive appeal, filed an application for leave to file a Notice of Cross-Appeal in an appeal brought by the Crown. Leave is required because the Notice of Cross-Appeal was not filed within the time specified in the *High Court Rules 2004* (Cth).¹ The application is supported by an affidavit of Jessica Fahmy sworn on 29 November 2024, annexing the proposed Notice of Cross-Appeal.

History of the application

2 On 7 June 2024, the Crown filed an application for special leave to appeal from the judgment of the Court of Criminal Appeal of New South Wales in *Batak v R* (2024) 114 NSWLR 313. The orders of the Court of Criminal Appeal were to the effect that Mr Batak's appeal was allowed and his conviction for murder ("count 1") was quashed, but a retrial was ordered on that count, as opposed to the entry of verdict of acquittal.² The Crown's proposed appeal to this Court concerned the quashing of the conviction on count 1.

3 On 5 November 2024, the applicant filed an application seeking an extension of time within which to seek special leave to appeal from the same judgment of the Court of Criminal Appeal. The application sought to challenge the Court of Criminal Appeal's order for a retrial.

4 On 7 November 2024, this Court granted the Crown special leave to appeal from the judgment of the Court of Criminal Appeal.³ On 21 November 2024, the Crown filed and served a Notice of Appeal in accordance with the *High Court Rules 2004* (Cth) ("the Crown appeal").⁴ Rule 42.08.1 requires that a respondent who wishes to appeal from a part of the judgment below, or who seeks a variation of part of that judgment, may file a Notice of Cross-Appeal within 7 days of service of the Notice of Appeal. The applicant was therefore required to file any Notice of Cross-Appeal in the Crown appeal by 28 November 2024. Ms Fahmy deposed that she attempted to file the Notice of Cross-Appeal on 28 November 2024, but it was not accepted for filing.

5 The proposed Notice of Cross-Appeal seeks to contend that:

1 *High Court Rules 2004* (Cth), r 42.08.1.

2 *Batak v R* (2024) 114 NSWLR 313 at 373 [238].

3 *The King v Batak* [2024] HCASL 304.

4 *High Court Rules 2004* (Cth), r 42.03.

2.

- (a) The Court of Criminal Appeal erred in failing to conclude that the verdict of the jury was unreasonable.
- (b) The Court of Criminal Appeal's discretion miscarried in failing to order that the applicant be acquitted of Count 1.

6 These grounds are identical to the proposed grounds of appeal identified by the applicant in his special leave application. On 6 February 2025, this Court refused the applicant's application for special leave to appeal from the judgment of the Court of Criminal Appeal.⁵

Consideration

7 The application for leave to file the proposed Notice of Cross-Appeal is an interlocutory application. It may therefore be determined on the papers without listing the application for hearing.⁶

8 The special leave application having been refused, it would be futile to grant the extension of time sought by the application in respect of the very same contentions.

9 The application dated 29 November 2024 is refused.

5 *Batak v The King* [2025] HCADisp15.

6 *High Court Rules 2004* (Cth), r 13.03.1.