

IN THE HIGH COURT OF AUSTRALIA

McCOLL

V.

McLERNON

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on THURSDAY, 2nd OCTOBER, 1947.

McCOLL v. McLERNON

REASONS FOR JUDGMENT.

LATHAM C.J.
STARKE J.
DIXON J.
McTIERNAN J.

REASONS FOR JUDGMENT.

LATHAM C.J.

This is an application for special leave to appeal from a judgment of the Full Court of the Supreme Court of Western Australia in a case in which the applicant McColl was charged with an offence against sec. 36 of the Gold Buyers' Act 1921. The charge was that on 23rd February 1947 at Kalgoorlie McColl and one Beer had gold in their possession, and when required by Hugh McLernon, a member of the police force, to satisfy him that such gold was lawfully in their possession, failed to do so. The charge alleges joint possession by McColl and Beer. Beer was convicted of having the gold in question in his possession. Then subsequently proceedings went on against McColl and he was convicted. It has been pointed out that the only charge upon which he could be convicted was a charge of joint possession of gold.

The Full Court has reached the conclusion, having jurisdiction to reconsider both facts and law under the Justices Act of Western Australia, that there was evidence which showed that McColl and Beer were acting in combination in relation to the gold, and the various circumstances relating to the raid by the police upon premises occupied by Beer in which McColl was found handling the gold were relied upon to support that finding.

The decision of the Court has been criticised upon certain general legal grounds, and it is impossible, I think, to deny the importance of the legislation which has been called in question. But the jurisdiction which we exercise in granting special leave to appeal is a very special jurisdiction indeed. It is not sufficient that general questions of law may be agitated and determined upon the appeal. Consideration should be given also to all the circumstances of the case.

This appears in my judgment to be a particularly unmeritorious case, and in my opinion the Court would be going beyond

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the principles which have hitherto guided it if special leave were to be granted. I think that the application should be refused in relation to its main subject matter.

A further point has been raised as to the power of the Full Court to deal with a sentence upon the return of an order to review. Before determining that matter I think the matter should be fully argued. In the present case the Full Court has stated that, even if it were of opinion that there were jurisdiction under the Justices' Act to vary a sentence, no variation in favour of the prisoner would be made. Accordingly there is no ground for granting special leave to appeal by reason of the argument founded upon the Justices' Act. In my opinion the application should be refused.

STARKE J. I agree.

DIXON J. I agree.

McTIERNAN J. I agree.

ORDER.

Application refused. No order as to costs.
