HIGH COURT OF AUSTRALIA

9 April 2025

CHERRY v STATE OF QUEENSLAND
[2025] HCA 14

Today, the High Court of Australia unanimously answered the questions in a special case to uphold the constitutional validity s 175L of the *Corrective Services Act 2006* (Qld) ("the CS Act").

The questions in the special case concerned two types of declarations that may be made by the parole board of Queensland or its president. First, a "no cooperation declaration", which under s 175L of the CS Act may be made by the parole board in relation to a "no body-no parole prisoner", where the remains of their homicide victim(s) have not been found and where the board is not satisfied that the prisoner has given "satisfactory cooperation" to locate the remains. The effect of a "no cooperation declaration" is that the prisoner cannot apply for parole. Second, a "restricted prisoner declaration", which under s 175E of the CS Act may be made by the president of the parole board in relation to a "restricted prisoner", which includes a prisoner sentenced to life imprisonment for more than one conviction of murder. The effect of a "restricted prisoner declaration" is that the prisoner cannot apply for parole other than "exceptional circumstances parole".

The plaintiff was convicted in 2002, following trial by jury in the Supreme Court of Queensland, of two counts of murder. He was sentenced to life imprisonment on each count. The sentencing judge also ordered that the plaintiff not be released from imprisonment until he had served a minimum term of 20 years. The body of one of the two murder victims has never been found. Accordingly, the plaintiff accepted that he was both a "no body-no parole prisoner" and a "restricted prisoner".

In 2022, shortly before the expiration of the plaintiff's minimum term of 20 years' imprisonment, the plaintiff applied for parole. In 2023, the parole board made a "no cooperation declaration" in respect of the plaintiff. By reason of that "no cooperation declaration", the parole board was obliged to refuse the plaintiff's parole application, and the plaintiff was precluded from applying again for parole unless: (a) the parole board was satisfied that the plaintiff had given satisfactory cooperation and gave a written notice to that effect; or (b) the plaintiff ceased to be a "no body-no parole prisoner". The plaintiff was also a "restricted prisoner", but no "restricted prisoner declaration" had yet been made in relation to the plaintiff.

The plaintiff commenced a proceeding in the High Court seeking declarations that ss 175L and 175E of the CS Act were constitutionally invalid, arguing that they each enable the Queensland Executive to impermissibly interfere with the exercise of judicial power by State Courts, contrary to the principle established in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51. The High Court unanimously held that s 175L of the CS Act was not invalid; it did not in any way operate to alter or increase the plaintiff's sentence, nor impose upon him additional punishment. The Court declined to opine on the validity of s 175E of the CS Act, in circumstances where the president had not yet made a "restricted prisoner declaration" concerning the plaintiff and there was no agreed fact that the president would ever do so.

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