



HIGH COURT OF AUSTRALIA

7 April 2011

LACEY v ATTORNEY-GENERAL OF QUEENSLAND [2011] HCA 10

Today the High Court allowed an appeal against a decision of the Court of Appeal of the Supreme Court of Queensland to increase the sentence imposed on Mr Dionne Matthew Lacey following an appeal by the Attorney-General of Queensland. By majority, the High Court held that a legislative provision allowing for appeals against sentence to be made by the Attorney-General did not permit the Court of Appeal to vary a sentence in the absence of demonstrated or inferred error on the part of the original sentencing judge.

Mr Lacey was convicted of manslaughter, and sentenced to 10 years imprisonment. The Crown Prosecutor had sought a sentence of 13 years, with a two year deduction for time already served on remand. The trial judge indicated that he would have imposed a sentence of 12 years, but had taken the two years served on remand into account. Mr Lacey appealed against the conviction and sought leave to appeal against his sentence. The Attorney-General appealed against the sentence on the alternative grounds that it was "inadequate" or "manifestly inadequate".

Section 669A(1) of the *Criminal Code* (Qld) empowers the Attorney-General to appeal against any sentence imposed by a trial court, and provides that the court hearing the appeal "may in its unfettered discretion vary the sentence and impose such sentence as to the Court seems proper." In the proceedings before the Court of Appeal, the Solicitor-General (on behalf of the Attorney-General) sought a sentence in the range of 15 to 18 years, before deduction for time on remand. The Court of Appeal dismissed Mr Lacey's appeal against conviction and application for leave to appeal against sentence, and allowed the Attorney-General's appeal. The Court, by majority, increased the sentence to 11 years, holding that the "unfettered discretion" conferred by s 669A(1) required the Court of Appeal to have regard to the sentence below, but come to its own view as to the proper sentence to be imposed.

The High Court today held that the Court of Appeal's construction was erroneous. The words of s 669A(1) neither expressly nor by implication defined a jurisdiction which enlivened a general power to vary sentences simply because the Attorney-General chose to appeal. Such a construction would require clear language to that effect. The appellate jurisdiction conferred by the section required error on the part of the sentencing judge to be demonstrated before the appellate court's "unfettered discretion" to vary the sentence arose. The High Court allowed the appeal, and set aside the order of the Court of Appeal, ordering that the appeal to that Court be dismissed.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*