

THE QUEEN v ABDIRAHMAN-KHALIF (A5/2020)

Court appealed from: Court of Criminal Appeal of the Supreme Court of South Australia
[2019] SASFC 133

Date of judgment: 31 October 2019

Special leave granted: 20 March 2020

In December 2017 the respondent was charged with being a member of a terrorist organisation (namely Islamic State) between July 2016 and May 2017 contrary to section 102.3(1) of the *Criminal Code* (Cth). Following trial in the Supreme Court of South Australia, a jury unanimously convicted the respondent of the offence and as a result the respondent was sentenced to three years imprisonment with a non-parole period of two years and three months.

The respondent appealed to the Court of Criminal Appeal of the Supreme Court of South Australia on three grounds:

1. that the trial judge erred in law in his directions as to what was required to establish that the respondent was intentionally a member of a terrorist organisation;
2. the fair trial of the respondent miscarried as a result of the unbalanced summing up by the trial judge; and
3. the verdict was unreasonable having regard to the evidence.

The majority of the Court of Criminal Appeal dismissed the appeal on grounds 1 and 2 but allowed the appeal on ground 3. Kourakis CJ (Parker J agreeing) held that there was no evidence against which to evaluate any connection between the proved conduct of the respondent with formal or informal membership of Islamic State. As a result the Court held that the conviction be set aside and an order of acquittal entered. Kelly J in dissent dismissed the appeal in its entirety, holding that the whole of the evidence pointed overwhelmingly to the respondent's guilt of the charge and it was open to the jury to convict the respondent.

The grounds of appeal in this Court are that in concluding that the evidence adduced at trial was incapable of proving the respondent was a member of a terrorist organisation, the majority of the Court of Criminal appeal erred in:

1. holding that, to prove that an accused person has taken steps to become a member of a terrorist organisation, the prosecution must adduce evidence as to how the terrorist organisation admits members; and
2. misconstruing the concept of an "organisation" for the purposes of Division 102 of the *Criminal Code* (Cth).