

IN THE MATTER OF JERROD JAMES CONOMY (P22/2019)

Court appealed from: High Court of Australia
[2019] HCA Trans 049

Date of judgment: 20 March 2019

Date referred to the Full Court: 22 May 2019

In this matter the Applicant seeks to bring an appeal from orders made by Justices Keane and Edelman on 20 March 2019:

- (a) dismissing his Applications for special leave to appeal in each of P3/2019 and P11/2019 together with a Summons filed in each application; and
- (b) ordering pursuant to S77RN of the *Judiciary Act 1903* (Cth) (“the vexatious proceedings order”) that he be prohibited from instituting any further proceedings in the High Court relating to the convictions the subject of the two decisions by the Western Australian Court of Appeal in *Conomy v Maden* [2016] WASCA 30 and *Conomy v Maden* [2016] WASCA 301 which were the subject of the applications for special leave to appeal.

The grounds of the proposed appeal, as filed in April 2019, included that there was a “substantial miscarriage of justice” in both the dismissal of the special leave applications and the making of the vexatious proceedings order. The Applicant claims to have been given insufficient notice of the Court’s intention to consider making such an order against him. The Applicant also contends that the Court ought not to have been satisfied that he had “frequently instituted or conducted vexatious proceedings in the Australian courts... within the meaning of s 77RN(1)(a) of the Act”. The Applicant also contends that the fact that the special leave applications were ‘dismissed’ not ‘refused leave’ is an important distinction. The Applicant has sought in June 2019 to amend, and in July and August 2019, to further amend the Notice of appeal.

The case raises a threshold procedural matter as to whether the appeal is competent. The Applicant contends that the dismissal of the two special leave applications and the orders refusing special leave to appeal in each of P3/2019 and P11/2019 were final orders made under S 77RN of the *Judiciary Act* (“the Act”) in the original jurisdiction of the Court and that therefore an appeal lies from them under s 34(1) of the Act which provides:

Appeals from Justices of High Court

(1) The High Court shall, except as provided by this Act, have jurisdiction to hear and determine appeals from all judgments whatsoever of any Justice or Justices, exercising the original jurisdiction of the High Court whether in Court or Chambers.

The Applicant's Notice of appeal dated 3 April 2019 was not accepted as filed within 14 days after the date of the judgment below, as required by the *High Court Rules 2004*. By Summons filed on 23 April 2019 the applicant seeks, inter alia, that his Notice of appeal be accepted for filing and an order that the time fixed by the Rules be enlarged. On 22 May 2019 Justice Gordon directed that the applicant's Summons be referred for consideration by the Court that is to deal with the purported appeal.

At a directions hearing on 3 July Justice Gordon ordered that counsel, to be identified by the Australian Government Solicitor, be appointed amicus curiae in relation to the applicant's Summons dated 23 April and any appeal.

The amicus contends that the determination of the special leave applications was made independently of S77RN of the *Act* and that insofar as such orders were made in the original jurisdiction of the Court, they were interlocutory in nature, so that an appeal without leave under s 34(2) of the *Act* would be incompetent. In any event, there was no error in the reasons for refusing special leave to appeal as any appeal from the decisions of the Western Australian Court of Appeal would have no prospect of success. The amicus argues that there is no material distinction between the "dismissal" and the "refusal" of an application and notes that both terms are often used interchangeably in special leave applications.

The amicus accepts that the vexatious proceedings order was a final order made in the exercise of the original jurisdiction conferred by s 77RN of the *Judiciary Act*, and that accordingly the High Court has jurisdiction pursuant to s 34(1) of the *Act* to hear and determine an appeal from that order. The amicus contends that the Applicant was given the opportunity of being heard before the vexatious proceedings order was made and there was no error in the reasons for making the vexatious proceedings order. Further or alternatively, the amicus submits that the vexatious proceedings order should be affirmed by the Full Court.