

MAHMUD v THE QUEEN (S137/2011)

Court appealed from: New South Wales Court of Criminal Appeal
[2010] NSWCCA 219

Date of judgment: 24 September 2010

Date referred to the Full Court: 18 April 2011

On 15 June 2009 Mr Mahmud was sentenced by Judge Graham to 7 years and 6 months imprisonment, with a non-parole period of 4 years and 6 months. This was in respect of charges of supplying a large commercial quantity of methylamphetamine and the possession of firearms. In sentencing Mr Mahmud, Judge Graham also took into account a number of other firearms offences (on a Form 1).

On 24 September 2009 the Court of Criminal Appeal (Giles JA, Hulme & Latham JJ) unanimously upheld the Crown's appeal on sentence. Their Honours however rejected the submission that Judge Graham had erred in characterising Mr Mahmud's involvement in the drug trade as being "below mid range". They also rejected the submission that his Honour had erred in similarly classifying the firearms offence.

The Court of Criminal Appeal nevertheless held that Judge Graham had erred in allowing Mr Mahmud an overly generous discount of 20% for his guilty pleas. Their Honours also found that the sentences imposed on both charges were manifestly inadequate. With respect to the drugs charge, they held that participants in the drugs trade should expect to receive heavy sentences. Their Honours also found that the firearms offence was still an objectively serious offence, notwithstanding the fact that it was below the mid-point of offending. This was especially so when Mr Mahmud's prior firearms offences were taken into account.

The Court of Appeal then re-sentenced Mr Mahmud. With respect to the firearms charge he was sentenced to five years imprisonment with a non-parole period of 3 years, 9 months. With respect to the drugs charge he was sentenced to nine years imprisonment, with a non-parole period of 6 years, 6 months. Mr Mahmud will become eligible for parole on 15 July 2015.

On 13 April 2011 a notice of constitutional matter was filed by the Applicant. The Attorneys-General of the Commonwealth, New South Wales, Western Australia and South Australia have intervened.

On 18 April 2011 Justice Hayne both expedited this matter and referred it into an enlarged bench to be fixed for hearing on the same day as *Muldrock v The Queen*.

The questions of law said to justify the grant of special leave to appeal include:

- Whether the Court of Criminal Appeal erred in law by holding that the sentences were manifestly inadequate when there was no error of principle or special circumstance that supported an appeal under s 5D of the *Criminal Appeal Act 1912* by the Crown.