CRUMP v STATE OF NEW SOUTH WALES & ANOR (S165/2011)

Date special case filed: 30 November 2011

On 20 June 1974 Mr Kevin Crump and Mr Allan Baker were sentenced to life imprisonment for murdering Mr Ian Lamb and for conspiring to murder Mrs Virginia Morse. Justice Taylor recommended that Mr Crump and Mr Baker never be released. In doing so, his Honour took into account the circumstances of the rape and murder of Mrs Morse, which the convicted men carried out in Queensland after having abducted Mrs Morse from her home in New South Wales.

At the time of Mr Crump's sentencing, life imprisonment was the mandatory sentence for murder, but prisoners had an opportunity for a grant of a release on licence. In 1990, the *Crimes Act 1900* (NSW) was amended such that life imprisonment was no longer mandatory for murder, but any sentence of life imprisonment was for the term of the person's natural life (with no opportunity for release on licence). Also in 1990, the *Sentencing Act 1989* (NSW) was amended such that a person serving life imprisonment (who had served at least 8 years) could apply to the Supreme Court for the determination of a minimum term of imprisonment and an additional term during which they could be released on parole. On 10 December 1992 Justice Loveday declined an application made by Mr Crump for such a determination. His Honour held that it would be premature to set a shorter term, having regard to considerations of retribution, general deterrence, the protection of society and the stage of Mr Crump's rehabilitation.

On 30 May 1994 the Court of Criminal Appeal (Mahoney JA, Hunt CJ at CL and Allen J) unanimously dismissed Mr Crump's subsequent appeal. Mahoney JA & Allen J found that Justice Loveday had not erred in exercising his discretion to refuse Mr Crump's application. Hunt CJ at CL held that the reason for the application's refusal should have been that Mr Crump's crimes fell within the worst category of cases, for which the maximum penalty was appropriate.

Mr Crump then made a second application for determination of his sentence. On 24 April 1997 Justice McInerney sentenced Mr Crump (for the murder of Mr Lamb) to 30 years imprisonment with eligibility for release on parole from 13 November 2003 and an additional term of the term of his natural life. For the charge of conspiracy to murder Mrs Morse, his Honour imposed a sentence of 25 years imprisonment (the then maximum sentence for that crime). His Honour found that Mr Crump had been a model prisoner and that he had made every attempt to rehabilitate himself in the difficult environment of maximum security incarceration. His Honour also found however that Mr Crump still had a long way to go before he could be considered for release.

In 2001 s 154A was inserted into the *Crimes (Administration of Sentences) Act 1999* (NSW) ("the Administration Act"). Under s 154A(3), the Parole Authority can direct the release of a prisoner who is the subject of a sentencing recommendation that he or she never be released. This however is only in circumstances where the prisoner now lacks the physical ability to

harm any person (or is in imminent danger of dying) and poses no risk to the community. On 11 September 2003 the Parole Board determined that Mr Crump was not eligible for release due to s 154A.

On 10 May 2011 Mr Crump filed a Writ of Summons seeking, inter alia, a declaration that he be eligible to have an application determined by the Parole Authority without having to show the factors required under s 154A(3) of the Administration Act.

On 23 November 2011 Mr Crump filed a Notice of a Constitutional Matter under s 78B of the *Judiciary Act 1903* (Cth). The Attorneys-General for the Commonwealth, Victoria, Queensland, South Australia and Western Australia have all advised this Court that they will be intervening in this matter.

On 30 November 2011 the parties filed a Special Case for the opinion of the Full Court.

The questions stated for the opinion of the Full Court include:

- Is s 154A of the Administration Act, in its purported application to the plaintiff, invalid, in that it has the effect of varying or otherwise altering a judgment, decree, order or sentence of the Supreme Court of New South Wales in a "matter" within the meaning of s 73 of the Constitution?