MOK v DIRECTOR OF PUBLIC PROSECUTIONS (NSW) (S246/2015)

Court appealed from: New South Wales Court of Appeal
[2015] NSWCA 98

Date of judgment: 17 April 2015

Special leave granted: 13 November 2015

In March 2004 Mr Yau Ming Matthew Mok was remanded on bail by a Local Court Magistrate to appear in the District Court of NSW for sentence (on a number of fraud related charges) on 13 April 2006. He failed to appear on that date and a bench warrant was issued for his arrest.

In December 2011 Mr Mok was arrested in Victoria on unrelated charges for which he was subsequently sentenced to six months imprisonment on 26 February 2013. On that day he was also arrested (by a Victorian detective) in execution of the NSW bench warrant.

While in the process of being extradited to New South Wales on 28 February 2013, Mr Mok briefly escaped from lawful custody (and was recaptured) while at Tullamarine airport. Tullamarine airport is a Commonwealth place for the purposes of s 52(i) of the Constitution. Mr Mok was then charged in New South Wales with the offence of attempting to escape from custody contrary to s 310D of the *Crimes Act* 1900 (NSW) ("the Crimes Act").

Local Court Magistrate Buscombe dismissed the charge against Mr Mok as failing to disclose a prima facie case. Justice Rothman however allowed the Director of Public Prosecutions' (NSW) subsequent appeal and remitted the matter for further hearing.

On 17 April 2015 the Court of Appeal (Meagher, Hoeben & Leeming JJA) dismissed Mr Mok's subsequent appeal. Their Honours found that Justice Rothman was correct to conclude that Mr Mok must have been taken to have been charged with a federal offence, namely, a contravention of s 310D of the Crimes Act as made applicable by reason of s 89(4) of the *Service and Execution of Process Act* 1992 (Cth) ("SEP Act"), giving rise to a prima facie case.

The ground of appeal is:

- The Court of Appeal erred in concluding that a person could be guilty of an offence contrary to s 310D of the Crimes Act, as applied by operation of s 89(4) of the SEP Act, even if that person was not an "inmate" as required by s 310D, so long as that person was being taken to another place in compliance with an order under s 83(8) of the SEP Act.

On 17 December 2015 the Respondent filed an Amended Notice of Contention, the grounds of which are:

- The Court of Appeal erred in failing to find that Mr Mok was an "inmate" within the meaning of s 310D of the Crimes Act and ss 4(d) and/or 4(e) of the *Crimes (Administration of Sentences) Act* 1999 (NSW) ("the Administration of Sentences Act"), as applied by the SEP Act in that:

  a) the warrant issued by the Victorian magistrate under the SEP Act was a warrant or order which committed Mr Mok to a "correctional centre" within the meaning of ss 4(1)(d) and/or 4(1)(e) of the Administration of Sentences Act, namely the Sydney Police Centre; and

  b) the Victorian magistrate was a *"competent authority"* within the meaning of ss 4(1)(d) and/or 4(1)(e) of the Administration of Sentences Act; or

  c) in the alternative to (b) above, the Victorian magistrate was a *"court"* within the meaning of ss 4(1)(d) and/or 4(1)(e) of the Administration of Sentences Act.