



HIGH COURT OF AUSTRALIA

Public Information Officer

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GEORGE PETER OSTROWSKI v JEFFREY RYDER PALMER

Ignorance of the law would not enable a Western Australian commercial rock lobster fisherman to escape a conviction for fishing in a prohibited area, the High Court of Australia held today.

Mr Palmer was charged by Mr Ostrowski, a Fisheries WA officer, with fishing for rock lobster in a marine life protection zone on the Point Quobba reef near Carnarvon in February 1999. In November 1998, when he was planning to revert to lobster fishing from line fishing, Mr Palmer twice visited the Fremantle office of Fisheries WA to obtain regulations covering Zone B of the WA fishing grounds. On the second visit, when copies of regulations for the 1998-99 lobster season were still unavailable, a staff member photocopied the office copy of the documentation, but these did not include the relevant regulations. Mr Palmer set 54 lobster pots in the exclusion zone near Point Quobba, believing his licence entitled him to do so. Fisheries officers observing him checking and setting pots did not point out his error.

A Carnarvon magistrate held that any mistake by Mr Palmer was a mistake of law, not a mistake of fact, so he could not rely on the defence in section 24 of the WA Criminal Code. Section 24 provides that a person who does an act under an honest and reasonable but mistaken belief in the existence of the state of things is not criminally responsible. Section 22 provides that ignorance of the law does not afford an excuse for an act or omission which constitutes an offence. The offence created by the regulation had three elements: holding a commercial fishing licence; fishing for rock lobsters; and doing so in waters around Quobba Point. Mr Palmer satisfied all three elements and held no erroneous belief about any element. What he did not know was that there was a regulation prohibiting his conduct. His conviction resulted in a mandatory penalty of \$26,700, a \$500 fine and \$2,000 costs. Mr Palmer successfully appealed to the Full Court of the WA Supreme Court. Mr Ostrowski appealed to the High Court, undertaking to pay Mr Palmer's costs. At the end of the appeal hearing Mr Ostrowski also undertook that the penalty, fine and costs would be remitted to Mr Palmer.

The Court held that section 24 was not concerned with mistakes at large, particularly whether there was a law against certain conduct. Section 24 applies to mistakes about the elements of the offence, not mistakes about the existence of the law creating the offence. The Court held that the case fell within section 22, not section 24. It allowed the appeal and reinstated Mr Palmer's conviction.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*