



## HIGH COURT OF AUSTRALIA

Public Information Officer

1 October 2004

### ROBERT JOHN FARDON v RODNEY JON WELFORD, ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND

Queensland legislation under which dangerous sexual offenders can continue to be held in detention after serving their prison terms in certain circumstances is valid, the High Court of Australia held today.

Mr Fardon was sentenced in 1980 to 13 years' imprisonment for rape and after eight years was released on parole. Twenty days later he committed rape, sodomy and assault occasioning actual body harm. He was sentenced to a 14-year jail term which expired 27 June 2003. The Dangerous Prisoners (Sexual Offenders) Act came into force on 6 June 2003. Mr Welford applied for an order that Mr Fardon be detained indefinitely under section 13 of the Act. Pursuant to section 8, Supreme Court Justice John Muir granted an interim detention order on 27 June, pending a final hearing of Mr Welford's application. The Court of Appeal, by majority, dismissed an appeal against Justice Muir's order and his judgment affirming the validity of the Act. After a four-day hearing, Justice Margaret White last November made an order for continuing detention. She said the major concern was Mr Fardon's refusal to participate in therapy to treat his sexual violence and alcohol and drug abuse. Mr Fardon also instituted an appeal against Justice White's order.

The High Court granted Mr Fardon special leave to appeal against the Court of Appeal decision relating to Justice Muir's order and later removed into the High Court so much of the cause pending in the Court of Appeal relating to Justice White's order. Mr Fardon challenged the validity of both section 8 concerning interim detention orders and section 13 concerning the process for granting continuing detention orders.

The Court, by a 6-1 majority, held that the Act was valid and dismissed the appeal. It held that the Act did not compromise the integrity of the Supreme Court or conflict with the power conferred on Federal Parliament by the Constitution to invest State courts with federal jurisdiction. The Act contained many safeguards of a trial, unlike the NSW Community Protection Act. The Court held in 1996 that the NSW Act, which provided for the continuing detention of convicted wife killer Gregory Wayne Kable, was invalid. By contrast, the Queensland Act is directed at a class of offenders rather than at one particular person, the Supreme Court exercises judicial power in determining whether the release of a sexual offender is an unacceptable risk, the Attorney-General bore the onus of proving a prisoner is a serious danger to the community, if the Supreme Court is satisfied a prisoner is a serious danger it had discretion to order a continuing detention order or a supervision order, such orders are subject to periodic review, the issue of unacceptable risk must be satisfied to a high degree of probability having regard to matters listed in section 13(4), detailed reasons must be given for any order, and there is a right of appeal.

- *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.*