



HIGH COURT OF AUSTRALIA

Public Information Officer

3 March 2004

STUART ANTHONY SILBERT (as executor of the estate of Stephen Retteghy) v DIRECTOR OF PUBLIC PROSECUTIONS OF WESTERN AUSTRALIA

The High Court of Australia has held that the property of a deceased person charged with a serious offence but not convicted before their death could be confiscated under Western Australian legislation.

Three members of the Court heard Mr Silbert's application for special leave to appeal in May 2003 but adjourned the matter to allow it to be heard by all seven members in December because of the constitutional issues that arose. The second hearing enabled Commonwealth and State attorneys-general to intervene and the matter was argued as if it was an appeal. The Court dismissed the special leave application in December and today issued written reasons for its decision.

Mr Retteghy died in August 1997 while on remand awaiting trial in the WA District Court on charges of cultivation and intention to sell or supply cannabis. Mr Silbert is the executor of his estate. Each offence was a serious offence for the purpose of the *Crimes (Confiscation of Profits) Act 1988*. Mr Retteghy had pleaded not guilty to both counts. In November 2000 the WA Supreme Court ordered that his property and a pecuniary penalty, totalling about \$500,000, be forfeited to the Crown. For the purposes of the Act, a dead person could be deemed to have been convicted of a serious offence. The Full Court of the Supreme Court dismissed Mr Silbert's appeal.

He contended that the Act was invalid in its operation for deceased estates because deeming provisions of the Act precluded the Supreme Court making sufficient inquiry into whether the deceased person had actually committed the offence in question. But the High Court held that the Act required a court not to make a forfeiture order unless it was satisfied beyond reasonable doubt that the dead person had committed the offence. For pecuniary penalty orders, a court was empowered to assess the value of benefits derived from commission of the serious offence. The Court held that nothing in the application for an order, the assessment of benefits derived from crime, and the making of a pecuniary penalty was contrary to sections of the Constitution concerning the administration of justice.

- *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.*