HIGH COURT OF AUSTRALIA

Public Information Officer

15 June 2005

ROBERT JOHN STRONG v THE QUEEN

The New South Wales Court of Criminal Appeal had not fallen into error in upholding a finding that Mr Strong was an habitual criminal, the High Court of Australia held today.

Mr Strong, 46, of Armidale, was charged with intimidation, based on writing sexually suggestive letters from prison to a woman he barely knew, and with stalking, based on pursuing the woman after his release. He moved in opposite the woman's house and shouted abuse and sexual suggestions to her, causing her fear and anxiety. Mr Strong, from a deprived background and with a history of drug abuse, had spent almost his entire adult life in custody. He had been diagnosed with borderline retardation, mental and personality disorders, and mental illness.

Mr Strong pleaded guilty to the offences. In 2001 in the Armidale District Court, Judge David Freeman sentenced him to four years' imprisonment for the intimidation and five years for stalking. The sentences were partly cumulative and partly concurrent, so totalled eight years with a non-parole period of six years, and took into account two other summary offences. The Crown later applied for Mr Strong, who had several convictions for assaults against women, to be pronounced an habitual criminal under the *Habitual Criminals Act*. Judge Freeman made the pronouncement and sentenced him a maximum 14 years' jail, to be served concurrently with the other sentences. No non-parole period is available under the Act.

The Court of Criminal Appeal (CCA) allowed an appeal by Mr Strong against the sentences for the substantive offences and re-sentenced him to a total of seven years' jail with a five-year non-parole period. The CCA dismissed an appeal against the pronouncement that he was an habitual criminal but allowed an appeal against the 14-year sentence, reducing it to eight years. Mr Strong appealed to the High Court on the ground that the CCA, having upheld the appeal against sentence for the substantive offences, was obliged to address first the question of whether a pronouncement should be made at all under the *Habitual Criminals Act* rather than just redetermining the sentence. He argued that, having quashed the sentences imposed by Judge Freeman for the substantive offences, the CCA was obliged to consider afresh both aspects of the decision under the Act, that is, the pronouncement and the sentence. The point was not raised in the CCA.

The High Court, by a 3-2 majority, dismissed the appeal. It held that the CCA had taken into account fresh evidence in three new psychiatric reports about Mr Strong's mental condition and had clearly considered whether using the Act to protect the public was justified. The majority held that if the point now raised in the High Court had been raised in the CCA it would not have affected the outcome.

- *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.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6998 Fax: (02) 6273 3025
Email: fhamilton@hcourt.gov.au