



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### THE STATE OF NEW SOUTH WALES v PETER ANDREW BUJDOSO

The State was under a duty to adopt reasonable measures to reduce the risk of harm to a person who was bashed when prison authorities knew he was a likely target of other prisoners, the High Court of Australia held today.

Mr Bujdoso pleaded guilty on 16 February 1990 to three counts of sexually assaulting males under 18 and was sentenced to a minimum term of two years and six months' imprisonment, to expire on 16 August 1992. In September 1991, he was admitted to Silverwater Prison's work release program, in which he had paid employment and returned to the prison each night. At the time, prisoners were classified as A, B or C, with C the minimum-security category. C1 prisoners were behind a secure fence with minimal supervision, C2 prisoners kept in an open institution, and C3 prisoners permitted to go out on work release and eligible for weekend, day or education leave.

In various prisons, a prison farm and at Kirkconnell Afforestation Camp, Mr Budjoso was called a "rock spider" and subjected to threats and an assault. However, by November 1990 he had become a C2. In May 1991, Mr Bujdoso was transferred to Silverwater where he received a threatening letter, of which prison officers were aware. He did not wish to be in protective custody and tried to avoid other paedophiles. Mr Bujdoso applied to be moved to the work release area as he felt he would be safest out at work and would be with other C3 prisoners in four units fenced off from the rest of Silverwater. Prisoners each had a room with their own key. Mr Bujdoso's room was at the end of a unit furthest from a central walkway and from the administration block. Two prison officers made a nightly head count then one remained to oversee all the units. This meant there were periods with no officers present and other periods with just one.

On 21 September 1991, up to four prisoners wearing balaclavas forced their way into Mr Bujdoso's room and began beating him with iron bars as he huddled in a corner. He lost consciousness. His injuries included a fractured skull. Mr Bujdoso sought to go back to Silverwater so he could continue working to pay his mortgage and to obtain further treatment for paedophilia. He said he realised prison officers did not want to accept responsibility for his safety, but another prisoner made a statement that he had overheard several other men talking about an attack on a "rock spider" and that they planned to give him another "going over". Mr Bujdoso was returned against his wishes to Kirkconnell where he served out his sentence.

He sued the State in the NSW District Court for damages for personal injuries in negligence. Judge Harvey Cooper held that the State had not breached its duty of care as prison authorities believed that work release inmates had proved themselves trustworthy so no special measures were necessary to ensure their safety. Mr Bujdoso successfully appealed to the Court of Appeal, which held that the State did breach the duty of care it owed him, especially when it had actual knowledge that he was at risk but took no steps to protect him. The guard at the units was not even told of the threats against Mr Bujdoso and nothing else was done, not even putting a more secure lock on his door. The State appealed to the High Court.

The Court unanimously dismissed the appeal. It held that the State had a duty to adopt reasonable measures to reduce the risk of harm to Mr Bujdoso, who was a known target of other prisoners. The risk of injury to him was not only foreseeable but expressly threatened. The State's system of classification and the rostering of one warder during the night were inadequate. The Court held that the State had acted in breach of its duty of care.

- *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.*