



HIGH COURT OF AUSTRALIA

Public Information Officer

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A v STATE OF NEW SOUTH WALES AND JOHN FLOROS

Succumbing to pressure to lay a charge with no reasonable and probable cause constituted a malicious prosecution, the High Court of Australia held today.

A, a NSW police service employee, was charged in March 2001 with homosexual intercourse with his 12- and 10-year-old stepsons, D and C, when they were aged eight and nine respectively. The boys were placed in foster care after the first interviews in October 2000 which followed a complaint of sexual abuse by an unidentified complainant. Detective Constable Floros was part of the joint investigation team in the Child Protection Enforcement Agency, and interviewed the boys, their mother S, and A. At committal proceedings in August 2001, C admitted his evidence was false and that he lied to help his brother who disliked A intensely. The magistrate discharged A on both counts, concluding there was no reasonable prospect that a jury could convict him.

A commenced proceedings for malicious prosecution, unlawful arrest, unlawful imprisonment and abuse of process. The District Court heard that Detective Floros had told A's solicitor, Greg Walsh, that he felt sorry for A but was under pressure to charge A because he was a police employee. In a second conversation Detective Floros repeated that he had been under pressure to charge A and if it had been up to him he would not have done so. He agreed with Mr Walsh that the boys' evidence was unreliable. Judge Harvey Cooper dismissed all causes of action apart from the claim of malicious prosecution in relation to the charge concerning C and awarded A \$31,250. He held that Detective Floros had acted maliciously by charging A for the improper purpose of succumbing to pressure from Child Protection Enforcement Agency officers to charge A. The Court of Appeal dismissed an appeal by A against Judge Cooper's decision in relation to the charge concerning D but allowed a cross-appeal by the State and Detective Floros against the decision in relation to the charge concerning C.

A appealed to the High Court, which today unanimously allowed the appeal and ordered that Judge Cooper's decision be restored. The appeal related to two of the required elements for a successful action for damages for malicious prosecution: that the defendant acted maliciously in initiating or maintaining the proceedings, and that the defendant acted without reasonable and probable cause. To constitute malice, the sole or dominant purpose of the prosecutor in bringing the proceedings must be a purpose other than to properly invoke the criminal law. Absence of reasonable and probable cause may be established by showing either that the prosecutor did not honestly believe the case that was instituted and maintained or that the prosecutor had no sufficient basis for such a belief. The Court held that it was open to Judge Cooper to conclude that neither charge was brought for the purpose of bringing a wrongdoer to justice but that the charges were the result of succumbing to pressure. However, absence of reasonable and probable cause was demonstrated only in respect of C, so A had proved malicious prosecution in respect of the charge concerning C. The Court also held that it was open to Judge Cooper to find that Detective Floros either did not form the view that a charge was warranted in respect of C or, if he did form that view, that there was no sufficient basis for doing so. The High Court held that the Court of Appeal had erred in interfering with Judge Cooper's findings of fact which depended upon his assessment of the credibility of the evidence given respectively by Detective Floros and Mr Walsh.

- *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.*