



## HIGH COURT OF AUSTRALIA

**Public Information Officer**

31 July 2008

### BRUCE BURRELL v THE QUEEN

The High Court of Australia today ordered the New South Wales Court of Criminal Appeal to rehear Mr Burrell's appeal against conviction for the kidnap and murder of Kerry Whelan in 1997 after the CCA reopened the original appeal hearing to correct an error.

Mrs Whelan disappeared on 6 May 1997. Her body has never been found. Mr Burrell had once worked for her husband Bernie Whelan's company but had been made redundant. Shortly before Mrs Whelan's disappearance Mr Burrell re-established contact with the Whelans. He was later charged with detaining Mrs Whelan for advantage and with murdering her on or about 6 May 1997. A trial in 2005 ended with a hung jury but Mr Burrell was convicted after a second trial in 2006. He was sentenced to life imprisonment for murder and 16 years' jail for the kidnapping charge.

Mr Burrell appealed to the CCA against his convictions and sought leave to appeal against the sentences. On Friday 16 March 2007, the CCA published reasons for its decision to dismiss the appeal against convictions, grant leave to appeal against the sentences, but dismiss that appeal. That same day, notification to Mr Burrell of the CCA's orders was prepared in the Court's Registry, signed on behalf of the Registrar and stamped with the Court's seal. Particulars of the notification were entered in to the records of the NSW Supreme Court as the court of trial.

After the orders were formally recorded, the CCA discovered that its reasons contained substantial factual errors. On Monday 19 March, the matter was called on by the CCA. Chief Judge at Common Law Peter McClellan said that the judgment, which he had written on behalf of the CCA, had some inaccuracies in its recounting of the Crown case. He said he had drawn upon a statement of facts alleged in the Crown case and mistakenly assumed it was correct. In further argument on 21 March, Mr Burrell submitted that the CCA had no power to reopen the appeals and that the matter should be redetermined by a newly constituted Bench because of a reasonable apprehension of bias. In reasons delivered on 23 March, the CCA rejected those submissions and held that it had power to reopen the appeals. It held that because the appeals were not determined in relation to the relevant evidence they had not been finally determined. The CCA ordered that its orders dismissing the appeals should be confirmed. Mr Burrell appealed to the High Court against the first orders made on 16 March 2007 and the second orders made on 23 March 2007.

The Court unanimously allowed the appeal. It held that the CCA lacked power to reopen the appeals after the first orders had been formally recorded. The second orders were made without power so must be set aside. As there was no dispute that the first orders were flawed because of the factual errors, those orders must also be set aside. The Court ordered that Mr Burrell's appeal against conviction and his application for leave to appeal against sentence be remitted to the CCA for rehearing.

- *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.*