



HIGH COURT OF AUSTRALIA

Public Information Officer

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GILBERT GEDEON v COMMISSIONER OF THE NEW SOUTH WALES CRIME COMMISSION,
NEW SOUTH WALES CRIME COMMISSION AND ATTORNEY-GENERAL FOR NEW SOUTH
WALES

DAVID DARLEY DOWE v THE COMMISSIONER OF THE NEW SOUTH WALES CRIME
COMMISSION AND THE NEW SOUTH WALES CRIME COMMISSION

Controlled operations that involved the selling of large quantities of cocaine to users was conduct likely to seriously endanger the health or safety of those people and should not have been authorised by the NSW Crime Commission, the High Court of Australia held today.

In early 2005, the Commissioner authorised six controlled operations using unlawfully imported cocaine in early 2005, pursuant to the NSW *Law Enforcement (Controlled Operations) Act* (LECO Act). Two authorities were used to support sales by an informer codenamed “Tom” to Mr Gedeon of 2kg and 750g of cocaine. Another was used for the sale of 1kg to Mr Dowe. None of this cocaine was recovered. The Commissioner and senior police had been briefed that recovery of the cocaine would be unlikely because it would be sold on to end users.

The LECO Act was the NSW response to the High Court’s decision in *Ridgeway v The Queen* in 1995 to quash John Anthony Ridgeway’s conviction for possession of heroin, which had been imported as part of an undercover police operation. The Act legitimised certain actions of undercover officers and permitted evidence obtained in authorised controlled operations to be classified as legal and prima facie admissible. Section 16 stated that activity engaged in as part of a controlled operation was not unlawful as long as it was authorised by the authority. Section 7(1)(b) stated that an authority to conduct a controlled operation must not be granted where a participant would be engaging in conduct likely to seriously endanger the health or safety of any other person.

In May 2005, Mr Gedeon and Mr Dowe were charged with taking part in the supply of a prohibited drug, contrary to the NSW *Drug Misuse and Trafficking Act*. The two men commenced proceedings in the NSW Supreme Court in April 2006, seeking declarations that the authorities were invalid. They failed in the Supreme Court and, by majority, in the Court of Appeal. In the meantime they were committed for trial. Mr Dowe was convicted in November 2007, after the Court of Appeal upheld the validity of the authorities, and sentenced to 12 years’ imprisonment. His appeal and Mr Gedeon’s trial are still pending. They sought special leave to appeal to the High Court from the Court of Appeal concerning the validity of the authorities. Two Justices referred their special leave applications to a Court of six Justices.

The Court unanimously granted them special leave to appeal and allowed their appeals with costs against the Commission. It made a declaration that the relevant authorities were invalid. The Court held that Mr Gedeon and Mr Dowe were entitled to succeed on grounds related to section 7(1)(b) of the LECO Act. It held that there was no statutory power to grant an authority where the proposed operation involved any participant in the operation of any activity listed in section 7(1). The Commission had estimated that the conduct of the controlled operations using Tom was that between 70,000 and 100,000 dosage units of cocaine would reach the streets. The Court held that a reasonable person in the position of the Commissioner would have foreseen that this would involve a risk of seriously endangering the health of at least some of the purchasers of the cocaine. It held that that prospect was sufficient to attract the prohibition in section 7(1)(b).

- 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.