



HIGH COURT OF AUSTRALIA

29 February 2012

LEX PATRICK WOTTON v THE STATE OF QUEENSLAND & ANOR
[2011] HCA 2

Today the High Court held that ss 132(1)(a) and 200(2) of the *Corrective Services Act* 2006 (Q) ("the Act") are not invalid, in their application to prisoners on parole, for impermissibly burdening the implied constitutional freedom of communication about government and political matters. The Court considered that both sections were reasonably appropriate and adapted to serve a legitimate end in a manner compatible with the maintenance of the constitutionally prescribed system of representative government.

The plaintiff is an Aboriginal person who was born on Palm Island and has resided there for a substantial part of his life. On 26 November 2004 the plaintiff participated in a riot on Palm Island following the death of an Aboriginal man, Mr Mulrunji Doomadgee, in police custody. The plaintiff was convicted of rioting causing destruction contrary to ss 61 and 65 of the *Criminal Code* (Q) ("the Code") and sentenced to six years' imprisonment with a parole eligibility date after two years served.

The second defendant ("the Parole Board") is a regional parole board established pursuant to ss 230-240 of the Act. One of its functions is to decide applications for parole orders. Under s 180(1) of the Act a prisoner may apply for a parole order if the prisoner has reached the applicable parole eligibility date. Section 200(2) of the Act provides that a parole order may contain conditions the board reasonably considers necessary to "ensure the prisoner's good conduct" or "stop the prisoner committing an offence."

The Parole Board directed that the plaintiff be released on parole, upon 22 conditions identified in the Parole Order as (a)-(v). Conditions (t) and (v) were to be supported as an exercise of the power conferred by s 200(2), and prohibited the plaintiff from attending public meetings on Palm Island without the prior approval of the corrective services officer and from receiving any direct or indirect payment or benefit from the media.

Condition (g) of the Parole Order required that the plaintiff "not commit an offence". Section 132(1)(a) of the Act makes it an offence for a person to "interview a prisoner, or obtain a written or recorded statement from a prisoner" including a prisoner released on parole. Section 132(2)(d), however, provides that a person does not commit an offence against s 132(1) if the person has the chief executive's written approval to carry out the relevant activity. Section 7 of the Code deems a person who, among other things, does any act for the purpose of enabling or aiding another to commit an offence, to have taken part in the commission of an offence. If the plaintiff were liable for an offence by the application of s 7, he would breach condition (g) of the Parole Order.

The plaintiff brought proceedings in the original jurisdiction of the High Court challenging the constitutional validity of ss 132(1)(a) and 200(2) of the Act, as they apply to prisoners on parole,

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on the basis that they impermissibly burden the implied constitutional freedom of communication about government and political matters. The plaintiff also challenged conditions (t) and (v) of the Parole Order on the same basis.

The Court held unanimously that both s 132(1)(a), as qualified by s 132(2)(d), and s 200(2), comply with this constitutional limitation upon the legislative power of the State. A majority held that both sections effectively burden freedom of communication about government or political matters, but that the sections are nevertheless each reasonably appropriate and adapted to serve a legitimate end in a manner compatible with the maintenance of the constitutionally prescribed system of government. The legitimate end of s 132(1)(a), as qualified by s 132(2)(d), is community safety and crime prevention through humane containment, supervision and rehabilitation of offenders. The legitimate end of s 200(2) is the imposition of conditions the Parole Board considers reasonably necessary to ensure good conduct and to stop the parolee committing an offence. In light of the validity of s 200(2), the validity of conditions (t) and (v) then depends on whether, in implementing them, the Parole Board exceeded the authority conferred upon it by s 200(2). That question did not arise in this proceeding.

- *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.*