



HIGH COURT OF AUSTRALIA

2 April 2014

ACHURCH v THE QUEEN

[2014] HCA 10

Today the High Court unanimously dismissed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales, which had dismissed Brian William Achurch's application under s 43 of the *Crimes (Sentencing Procedure) Act* 1999 (NSW) ("the Sentencing Act") to re-open proceedings in that Court in which he had been re-sentenced after a successful Crown appeal.

Mr Achurch was convicted after a trial by jury in the District Court of New South Wales of three counts of supplying prohibited drugs contrary to s 25 of the *Drug Misuse and Trafficking Act* 1985 (NSW). He was sentenced on each of the counts to a term of imprisonment. A Crown appeal to the Court of Criminal Appeal against the inadequacy of the sentences, individually and collectively, was allowed. The Court re-sentenced the appellant. It was not in dispute that in re-sentencing Mr Achurch and fixing non-parole periods, the Court applied an approach which was subsequently held by the High Court in *Muldrock v The Queen* (2011) 244 CLR 120; [2011] HCA 39 to have been incorrect.

Mr Achurch applied to the Court of Criminal Appeal to re-open the proceedings on the Crown appeal. He invoked ss 43(1)(a) and 43(2)(a) of the Sentencing Act, which authorise a court to re-open criminal proceedings, including proceedings on appeal, in which the court has "imposed a penalty that is contrary to law", and "impose a penalty that is in accordance with the law".

The Court of Criminal Appeal, sitting a bench of five, dismissed the application. By special leave, Mr Achurch appealed to the High Court. The question in this appeal was whether s 43 of the Sentencing Act authorised the re-opening of proceedings in which a sentence open at law was reached by a process of reasoning involving an error of law.

Dismissing the appeal, the High Court held that a penalty is not "contrary to law" for the purposes of s 43 of the Sentencing Act only because it is reached by a process of erroneous reasoning or factual error. Correction of errors of that type is principally available by way of appeal. The sentences imposed on Mr Achurch were open at law and, therefore, were not "contrary to law" for the purposes of s 43.

- *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.*