HIGH COURT OF AUSTRALIA

12 August 2015

FILIPPOU v THE QUEEN

[2015] HCA 29

Today the High Court unanimously dismissed an appeal from the Court of Criminal Appeal of the Supreme Court of New South Wales ("the CCA") against the convictions and sentence imposed upon the appellant, Christopher Angelo Filippou, for two counts of murder.

In 2010, the appellant shot and killed two brothers, Sam and Luke Willis. During a dispute, the brothers confronted the appellant outside his house. The appellant shot them at close range. The next day, the appellant admitted to police that he had killed the brothers. But he claimed that Luke Willis had pulled out the gun, and that he had taken the gun from Luke before shooting the brothers.

The appellant was charged with two counts of murder. To each count, he pleaded not guilty of murder but guilty of manslaughter by reason of provocation. He was tried before a judge of the Supreme Court of New South Wales, sitting without a jury. The sole issue at trial was provocation. The prosecution alleged that the appellant, not one of the brothers, brought the gun. The judge found that the allegation was not proved beyond reasonable doubt. Nevertheless, the judge found that there was no reasonable possibility that the appellant had lost self-control before he shot the brothers, and therefore the partial defence of provocation failed. The appellant was found guilty and convicted of both counts of murder.

In sentencing, the trial judge was neither satisfied beyond reasonable doubt that the appellant brought the gun nor satisfied on the balance of probabilities that one of the brothers brought the gun. The origin of the gun was, therefore, not proved to the standard required of either an aggravating factor or a mitigating factor in sentencing. Accordingly, the trial judge sentenced the appellant on the basis that the origin of the gun was unknown.

On appeal, the CCA held that the trial judge erred in fact as to the sequence of events before the killings, and possibly erred in law in directing herself as to the requirements of the partial defence of provocation, but that there was no miscarriage of justice because the appellant had been proved guilty beyond reasonable doubt of murder. The CCA found no error in the appellant's sentence.

By grant of special leave, the appellant appealed to the High Court against his convictions and sentence. The Court unanimously dismissed the appeal. In relation to the appeal against conviction, the plurality held that the alleged errors of the trial judge were either not made out or of no consequence, and therefore there was no miscarriage of justice that would warrant allowing the appeal and remitting the matter to the CCA. On the appeal against sentence, the Court held that the judge was not bound to adopt the view of the facts most favourable to the appellant, and was therefore correct in sentencing on the basis that the origin of the gun was unknown.

- *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.*

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