



HIGH COURT OF AUSTRALIA

3 February 2017

IN THE MATTER OF QUESTIONS REFERRED TO THE COURT OF DISPUTED RETURNS
PURSUANT TO SECTION 376 OF THE COMMONWEALTH ELECTORAL ACT 1918 (CTH)
CONCERNING SENATOR RODNEY NORMAN CULLETON
[2017] HCA 4

Today the High Court unanimously held that Rodney Norman Culleton was a person who was convicted and subject to be sentenced for an offence punishable by imprisonment for one year or longer at the time of the 2016 federal election, and therefore was incapable of being chosen as a Senator under s 44(ii) of the Constitution.

On 2 March 2016, Mr Culleton was convicted, in his absence, in the Local Court of New South Wales at Armidale of the offence of larceny. As the offence of which Mr Culleton was convicted concerned property of a value less than \$5,000, he was liable to imprisonment for a maximum term of two years. Under s 25(1)(a) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) ("the CSP Act"), a sentence of imprisonment may not be imposed upon an "absent offender". The Local Court issued a warrant for the arrest of Mr Culleton in order to have him brought to the Court for sentencing.

On 16 May 2016, a writ was issued for the election of 12 Senators for the State of Western Australia to serve in the Senate of the Parliament of the Commonwealth. Mr Culleton was nominated as a candidate in a group nomination for Pauline Hanson's One Nation party. Polling day for the election was 2 July 2016. On the return of the writ, Mr Culleton was noted as elected and he has since sat as a Senator.

On 8 August 2016, the warrant for the arrest of Mr Culleton was executed, and the Local Court granted an annulment of Mr Culleton's conviction pursuant to s 8 of the *Crimes (Appeal and Review) Act 2001* (NSW). On 25 October 2016, the Local Court found Mr Culleton guilty of the offence of larceny on his own plea but, pursuant to s 10(1)(a) of the CSP Act, dismissed the charge without proceeding to conviction.

On 8 November 2016, the President of the Senate referred to the High Court, in its capacity as the Court of Disputed Returns, the question whether Mr Culleton's conviction had the effect of disqualifying him from being chosen as a Senator by reason of s 44(ii) of the Constitution. The Senate's reference also asked how the vacancy should be filled if Mr Culleton were found to have been incapable of being chosen as a Senator.

The Court held that Mr Culleton was convicted and subject to be sentenced for an offence punishable by imprisonment for one year or longer at the date of the 2016 election, both as a matter of fact and as a matter of law. The subsequent annulment of the conviction had no effect on that state of affairs. The Court held that the resulting vacancy should be filled by a special count of the ballot papers.

- *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.*