

HT v THE QUEEN & ANOR (S123/2019)

Court appealed from: New South Wales Court of Criminal Appeal

Date of judgment: 17 July 2017

Special leave granted: 12 April 2018

This appeal raises the question of whether, in a Crown appeal against sentence pursuant to s 5D of the *Criminal Appeal Act 1912* (NSW), the Court of Criminal Appeal has the power to deny the respondent access to evidence admitted in the sentencing proceedings. If such a power does exist, then by what principles is the Court of Criminal Appeal guided in assessing the procedural unfairness occasioned to the affected party?

The appellant submits that she was denied procedural fairness at the hearing of the Crown appeal against sentence because she was denied access to material ("Exhibit C") which was the basis of the imposition of a statutorily authorised disproportionate sentence upon her and which contained evidence critical to the questions involved in the determination of the Crown appeal against her sentence.

The appellant submits that she was effectively denied the opportunity to properly address the Court of Criminal Appeal regarding the adequacy of the discount given by the sentencing Judge. She further claims that she was denied the ability to make submissions on whether a residual discretion should be re-exercised and what level of discount should be applied in the event of a re-sentence.

The grounds of appeal include:

- The Court of Criminal Appeal erred in denying the appellant and/or her legal representatives access to Exhibit C at the hearing of the Crown appeal against sentence.
- The appellant was denied procedural fairness at the hearing of the Crown appeal against sentence in the Court of Criminal Appeal.
- The Court of Criminal Appeal erred in exercising its discretion in s 5D of the *Criminal Appeal Act 1912* (NSW) to vary the sentence imposed on the appellant. In particular, the Court of Criminal Appeal failed to consider:
 - I. The denial of procedural fairness afforded to her at the hearing of the Crown appeal against sentence and its significance; and
 - II. The conduct of the executive in bringing the appeal in circumstances where she was denied access to Exhibit C.