

REEVES v THE QUEEN (S44/2013)

Court appealed from: New South Wales Court of Criminal Appeal
[2013] NSWCA 34

Date of judgment: 21 February 2013

Referred to a full bench: 7 June 2013

Mr Graeme Reeves ("the Applicant") was convicted and sentenced for the following offences:

- i) obtaining a financial advantage by deception;
- ii) maliciously inflicting grievous bodily harm with intent; and
- iii) two offences of aggravated indecent assault.

These offences occurred between December 2001 and July 2003 when the Applicant was employed as an obstetrician and gynaecologist at the Bega and Pambula District Hospitals. The trial judge, Judge Woods, sentenced the Applicant to 3½ years imprisonment, with a non-parole period of 2 years. The Applicant then sought leave to appeal against both his conviction for the grievous bodily harm with intent count and the aggravated indecent assault counts. For its part, the Crown appealed against the manifest inadequacy of the sentences imposed.

On 21 February 2013 the New South Wales Court of Criminal Appeal (Bathurst CJ, Hall & Hulme JJ) upheld the Applicant's appeal in part. This was in respect to one of the counts of aggravated indecent assault. Their Honours also found that Judge Woods had erred in directing the jury concerning the issue of consent (to the operation), being the subject matter of the maliciously inflicting grievous bodily harm count. The Court of Criminal Appeal nevertheless applied the proviso in s 6(1) of the *Criminal Appeal Act* 1912 (NSW) and dismissed the Applicant's appeal. Their Honours held that no substantial miscarriage of justice had occurred, nor had the Applicant lost a reasonable chance of acquittal. They further held that Judge Woods' error was not so fundamental that the proviso could not be used.

The Court of Criminal Appeal also upheld the Crown's appeal on sentence. Their Honours found that the effective sentence imposed on the Applicant was manifestly inadequate. They held that Judge Woods had given excessive weight to the Applicant's chronic depressive condition. This was particularly so in relation to the obtaining a benefit by deception count and that of maliciously inflicting grievous bodily harm with intent. On the aggravated indecent assault count however, the Court of Criminal Appeal did not consider that the sentence imposed by Judge Woods to be manifestly inadequate. Their Honours then went on to resentence the Applicant to 5½ years imprisonment, with a non-parole period of 3½ years.

On 7 June 2013 Chief Justice French and Justice Kiefel referred this matter into the Full Court so that it may be argued as if it was on appeal.

The questions of law said to justify the grant of special leave to appeal include:

- In what circumstances, if any, can a surgeon who performs an operation believing it to be necessary for the patient's wellbeing be guilty of a crime requiring proof of malice or specific intent to inflict grievous bodily harm?
- Does the civil law concept of "informed consent" have any role in such a case?