HIGH COURT OF AUSTRALIA

14 August 2014

EDWARD POLLENTINE & ANOR v THE HONOURABLE JARROD PIETER BLEIJIE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND & ORS

[2014] HCA 30

Today the High Court unanimously upheld the validity of s 18 of the *Criminal Law Amendment Act* 1945 (Q) which allows a trial judge to make directions for the indefinite detention of a person found guilty of an offence of a sexual nature committed upon or in relation to a child.

Section 18 of the Act provides that a judge presiding at the trial of a person found guilty of an offence of a sexual nature committed upon or in relation to a child may direct that two or more medical practitioners inquire as to the mental condition of the offender, and in particular whether the offender "is incapable of exercising proper control over the offender's sexual instincts". The section provides that if the medical practitioners report to the judge that the offender "is incapable of exercising proper control over the offender's sexual instincts", the judge may, either in addition to or in lieu of imposing any other sentence, declare that the offender is so incapable and direct that the offender be detained in an institution "during Her Majesty's pleasure". An offender the subject of a direction to detain is not to be released until the Governor in Council is satisfied on the further report of two medical practitioners that it "is expedient to release the offender".

In 1984 Edward Pollentine and Errol George Radan each pleaded guilty in the District Court of Queensland of sexual offences committed against children. In each case, on the report of two medical practitioners, the District Court declared that Mr Pollentine and Mr Radan were incapable of exercising proper control over their sexual instincts and directed that they be detained in an institution during Her Majesty's pleasure. Mr Pollentine and Mr Radan brought proceedings in the original jurisdiction of the High Court challenging the validity of s 18 of the Act on the ground that it was repugnant to or incompatible with the institutional integrity of the District Court, thereby infringing Ch III of the Constitution.

The High Court upheld the validity of the provision. The Court held that while a court may direct the detention but not the release of an offender under s 18, the court has discretion whether to direct detention. Furthermore, release of an offender is not subject to the unconfined discretion of the Executive and does not lack sufficient safeguards. Rather, a decision to release is dependent upon medical opinion about the risk of an offender reoffending, and the decision is subject to judicial review. The Court held that the provision is not repugnant to or incompatible with that institutional integrity of the State courts which bespeaks their constitutionally mandated position in the Australian legal system.

- *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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