



HIGH COURT OF AUSTRALIA

10 May 2023

ATTORNEY-GENERAL (CTH) v HUYNH & ORS
[2023] HCA 13

Today the High Court, by majority, allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned whether ss 78 and 79 of the *Crimes (Appeal and Review) Act 2001* (NSW) ("the CAR Act") applied to a person convicted of a Commonwealth offence either by their own force or by operation of s 68(1) of the *Judiciary Act 1903* (Cth).

Section 78(1) of the CAR Act permits a convicted person to apply to the Supreme Court for an inquiry into a conviction or sentence. If it appears that there is a doubt or question as to the convicted person's guilt, any mitigating circumstances, or any part of the evidence in the case, s 79(1)(a) of the CAR Act permits the Chief Justice or an authorised judge of the Supreme Court to direct that such inquiry be conducted, and s 79(1)(b) permits the Chief Justice or an authorised judge to refer the whole case to the Court of Criminal Appeal to be dealt with as an appeal under the *Criminal Appeal Act 1912* (NSW). Section 68(1) of the *Judiciary Act* applies certain laws of a State or Territory to persons who are charged with Commonwealth offences and in respect of whom jurisdiction is conferred on the courts of that State or Territory under s 68(2).

Mr Huynh was convicted of a Commonwealth offence by the District Court of NSW. Following an unsuccessful conviction appeal, he applied to the Supreme Court for an inquiry into the conviction and sought an order that the whole case be referred to the Court of Criminal Appeal to be dealt with as an appeal. A single judge dismissed the application on its merits. Mr Huynh applied to the Court of Appeal for judicial review of that decision, joining the Commonwealth Attorney-General to the proceeding. The question of the applicability of ss 78 and 79 of the CAR Act to Mr Huynh was raised as a preliminary issue. The Court of Appeal, by majority, held that ss 78 and 79 did not apply of their own force or by force of s 68(1) of the *Judiciary Act* and therefore the single judge had no jurisdiction to determine Mr Huynh's application under s 78(1) for an inquiry into his conviction.

On appeal to the High Court, the Attorney-General submitted, with Mr Huynh's support, that the Court of Appeal's decision was incorrect. There being no contradictor, the Court appointed amici curiae to present arguments responding to those of the Attorney-General and Mr Huynh. The Court unanimously held that ss 78 and 79 do not apply by their own force, holding that the conferral of a power on a State court to set aside on an appeal a conviction or sentence imposed in federal jurisdiction would be beyond the State's legislative power. However, the majority held that ss 78(1) and 79(1)(b) of the CAR Act, but not s 79(1)(a), were applied as Commonwealth laws by force of s 68(1) of the *Judiciary Act*. The majority held that unlike an inquiry directed under s 79(1)(a), ss 78(1) and 79(1)(b) did not concern non-judicial procedure. Those laws could be characterised as with respect to the hearing and determination of an appeal arising out of the trial or conviction of a convicted person, and like jurisdiction could be invested in a State court under s 68(2) of the *Judiciary Act* with respect to persons charged with a federal offence.

- *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.*