HIGH COURT OF AUSTRALIA

14 June 2023

MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS v THORNTON
[2023] HCA 17

Today, the High Court, by majority, dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia. The appeal concerned whether the Minister's decision refusing to revoke a decision to cancel Mr Thornton's visa gave rise to jurisdictional error because the Minister took into account an irrelevant consideration, namely Mr Thornton's offending as a child for which no conviction was recorded.

The issues in the appeal principally involved construction of s 85ZR(2)(b) of the *Crimes Act 1914* (Cth) and characterisation of s 184(2) of the *Youth Justice Act 1992* (Qld). Section 85ZR(2)(b) of the *Crimes Act* relevantly provided that "where, under a State law ... a person is, in particular circumstances or for a particular purpose, to be taken never to have been convicted of an offence under a law of that State ... the person shall be taken, in any State ..., in corresponding circumstances or for a corresponding purpose, by any Commonwealth authority in that State ..., never to have been convicted of that offence". Section 184(2) of the *Youth Justice Act* relevantly provided that "a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose".

Mr Thornton, a citizen of the United Kingdom who had lived in Australia since he was three years old, held a Class BB Subclass 155 Five Year Resident Return visa. When he was 21 years old, he was convicted of offences and sentenced to 24 months' imprisonment. As a result, his visa was subject to mandatory cancellation under s 501(3A) of the *Migration Act 1958* (Cth). Mr Thornton made representations to the Minister for the revocation of the visa cancellation. The representations included reference to offences committed when he was a child. In deciding not to revoke the visa cancellation under s 501CA(4) of the *Migration Act*, the Minister said that he was satisfied that Mr Thornton represented an unacceptable risk of harm to the Australian community. Before reaching this conclusion, the Minister had noted that Mr Thornton had begun "offending as a minor and had a number of offences recorded before reaching adulthood".

The primary judge dismissed Mr Thornton's application for judicial review of the Minister's decision, including on the ground that the Minister had taken into account Mr Thornton's offences committed as a child contrary to s 184(2) of the *Youth Justice Act* and s 85ZR(2)(b) of the *Crimes Act*, which made those offences irrelevant considerations. On appeal, the Full Court quashed the Minister's decision on that ground.

The High Court held, by majority, that the Minister had taken into account an irrelevant consideration, which was a jurisdictional error vitiating the decision. Section 184(2) of the *Youth Justice Act* was a State law which, in all circumstances and for all purposes, provided that Mr Thornton was taken never to have been convicted of an offence committed when he was a child under a Queensland law. The consequence was that Mr Thornton, under s 85ZR(2) of the *Crimes Act*, was to be taken by any Commonwealth authority, in all circumstances and for all purposes, never to have been convicted of an offence to which s 184(2) of the *Youth Justice Act* applied.

- *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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