



HIGH COURT OF AUSTRALIA

15 November 2023

HCF v THE QUEEN [2023] HCA 35

Today, the High Court dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. The appeal concerned whether there had been a miscarriage of justice in the appellant's convictions, following a trial by a jury, of six sexual offences out of 19 counts on an indictment. The alleged miscarriage arose from an undisputed irregularity in the jury's conduct.

The day after the jury returned their verdicts, a juror delivered a note to the Acting Deputy Registrar concerning the jury's deliberations. This note caused the trial judge to authorise the Sheriff of Queensland to conduct an investigation under s 70(7) of the *Jury Act 1995* (Qld). The trial judge sentenced the appellant the following day. The investigation subsequently revealed a combination of conduct involving: (1) one juror, juror X, undertaking internet research about the definitions of and sentences for rape and unlawful carnal knowledge; (2) juror X informing the other members of the jury about this research; and (3) the other members of the jury not informing the trial judge of this conduct of juror X, all contrary to the directions of the trial judge. The appellant appealed his convictions to the Court of Appeal, arguing that the conduct gave rise to a miscarriage of justice. The appeal was subsequently dismissed.

Before the High Court, a majority (Gageler CJ, Gleeson and Jagot JJ) held no miscarriage arose. The majority held that, in all cases of jury or juror misconduct, what is required to establish a miscarriage of justice, and what will also establish a substantial miscarriage of justice, is that a fair-minded and informed member of the public might reasonably apprehend that the jury (or juror) might not have discharged or might not discharge the jury function of rendering a verdict according to law, on the evidence, and in accordance with the directions of the judge. In the circumstances of this case, where the alleged miscarriage of justice by juror misconduct or irregularity had arisen after conviction, the issue of whether a miscarriage of justice occurred involved asking "whether on the facts to be found on the balance of probabilities, might a fair-minded and informed member of the public reasonably apprehend that the jury or a juror might not have discharged the function of deciding the appellant's guilt according to law, on the evidence, and in accordance with the directions of the judge?" The majority answered that question in the negative as the objective nature and extent of the misconduct meant that it only might provide a basis upon which someone might speculate that the jury might not have discharged its function as required.

The minority (Edelman and Steward JJ) considered that the conduct was plainly a departure from the strict application of the law to which an accused is entitled. The question was whether, having regard to its nature and character, the conduct had the capacity to prejudice the jury's consideration of the appellant's case, irrespective of whether the result might have been different. The minority considered that the three serious acts of disobedience of the trial judge's directions supported, at the very least, a conclusion that the impugned conduct had the capacity to prejudice the jury's consideration of the appellant's case and involved a serious denial of procedural fairness to both the appellant and the Crown. As such, the minority held that a miscarriage of justice had occurred.

- *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.*