

SUPREME COURT OF QUEENSLAND

CITATION: *R v HBZ (No 2)* [2020] QCA 80

PARTIES: **R**
v
HBZ
(appellant)

FILE NO/S: CA No 176 of 2019
DC No 21 of 2019

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction & Sentence

ORIGINATING COURT: District Court at Townsville – Date of Conviction: 6 June 2019; Date of Sentence: 10 June 2019 (Lynham DCJ)

DELIVERED ON: 22 April 2020

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: McMurdo and Mullins JJA and Boddice J

ORDERS: **1. Vary order 4 made on 17 April 2020 to substitute 19 January 2021 as the fixed parole release date.**

2. Set aside the pre-sentence custody declaration made for count 1 at first instance and, in lieu, the following declaration is made:

“Pursuant to s 159A of the *Penalties and Sentences Act 1992 (Qld)* it is declared that 92 days spent in pre-sentence custody between 6 June 2019 and 5 September 2019 is time that is taken to be imprisonment already served under the sentences.”

3. Vary order 5 made on 17 April 2020 to delete the reference to “declaration as to pre-sentence custody and”.

CATCHWORDS: CRIMINAL LAW – PROCEDURE – JUDGMENTS AND ORDERS – CORRECTION UNDER SLIP RULE – OTHER PARTICULAR CASES – where the appellant had been granted appeal bail – where the appellant succeeded on his appeal against sentence – where the parties had not advised the court before the orders were made on the appeal against sentence that the appellant had been granted appeal bail – where variation required to the orders as a result

R v HBZ [\[2020\] QCA 73](#), related

COUNSEL: A W Collins for the appellant

D Balic for the respondent

SOLICITORS: Resolute Legal for the appellant
Director of Public Prosecutions (Queensland) for the
respondent

- [1] **THE COURT:** When the court heard the appeal, the members of the court were not advised by either the appellant or the respondent that the appellant had, in fact, on 5 September 2019 been granted bail pending the hearing of the appeal. When the court's decision in *R v HBZ* [2020] QCA 73 was published on 17 April 2020, the orders were made on the basis that the appellant had remained in custody after being sentenced.
- [2] Further orders were therefore made on 17 April 2020 with the concurrence of the appellant and the respondent that the appellant surrender himself to the Townsville Police Station at 10 am on 22 April 2020 and that a warrant issue for his arrest to lie in the Registry for a period of seven days.
- [3] It is now necessary to vary the orders made on 17 April 2020 to reflect the revised parole release date for count 1, after allowing for the appellant to serve one year of the sentence in custody and to substitute a fresh declaration as to pre-sentence custody.
- [4] The further orders are:
1. Vary order 4 made on 17 April 2020 to substitute 19 January 2021 as the fixed parole release date.
 2. Set aside the pre-sentence custody declaration made for count 1 at first instance and, in lieu, the following declaration is made:

“Pursuant to s 159A of the *Penalties and Sentences Act* 1992 (Qld) it is declared that 92 days spent in pre-sentence custody between 6 June 2019 and 5 September 2019 is time that is taken to be imprisonment already served under the sentences.”
 3. Vary order 5 made on 17 April 2020 to delete the reference to “declaration as to pre-sentence custody and”.