

SUPREME COURT OF QUEENSLAND

CITATION: *R v P; ex parte A-G (Qld)* [2002] QCA 436

PARTIES: **R**
v
P
(respondent/applicant)
EX PARTE ATTORNEY-GENERAL OF QUEENSLAND
(appellant/respondent)

FILE NO/S: CA No 172 of 2002
DC 1206 of 2002

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Criminal Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EXTEMPORE ON: 17 October 2002

DELIVERED AT: Brisbane

HEARING DATE: 17 October 2002

JUDGES: McPherson JA, Cullinane and Holmes JJ
Separate reasons for judgment of each member of the court, each concurring as to the order made

ORDER: **Paragraph 3 of the order of the Court of Appeal date 10 October 2002 in Appeal no 172 of 2002 be varied so that a bench warrant issue for the arrest of the respondent but lie in the Registry until the date upon which the application for special leave to appeal to the High Court is either determined or withdrawn or not proceeded with or until further order.**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – WARRANTS – FOR ARREST AND DETENTION – EXECUTION – application for stay of arrest warrant issued after sentence increased on Attorney-General’s appeal pending hearing by High Court – whether risk of serving sentence before appeal hear justifies stay of warrant

COUNSEL: P S Hardcastle for the respondent/applicant
M J Copley for the appellant/respondent

SOLICITORS: Hemming & Hart for the respondent/applicant
Director of Public Prosecutions (Queensland) for the appellant/respondent

McPHERSON JA: A few days ago the applicant now before us was the respondent to an appeal by the Attorney-General against

the inadequacy of the sentence imposed upon him in the District Court. The appeal succeeded and a sentence of some four months' imprisonment was imposed upon him instead of the non-custodial sentence that he had previously incurred.

At the time, the Court of Appeal was asked to and did order that a bench warrant issue but that it lie in the Registry for seven days before being executed. Since that date, the applicant has applied to the High Court of Australia for special leave to appeal against the order of the Court of Appeal imposing that sentence of imprisonment.

It is evident from the times that we were given that the expectation is that it would be some six to 12 months before an appeal will be heard if special leave were granted and it would be some time, at least a month or so, before the special leave application could be heard.

It seems to me that there is something of a risk in these circumstances that the respondent might very well have served his sentence in full before the process of special leave and appeal has been gone through, which would render any appeal that he instituted quite nugatory if it was successful. Of course, we do not wish to create a practice by which individuals who are sentenced for the first time on an Attorney's appeal institute High Court special leave applications simply for the purpose of deferring their imprisonment; but I think there are reasons to expect that that would not be the case.

On the other hand, there are such strong reasons for trying to avoid the possibility that the sentence will have been served before it is perhaps set aside that I am inclined to think that this is a case in which the application that is now made to us should be granted.

The order will therefore be in the following form; that is, that paragraph 3 of the order of the Court of Appeal dated 10 October 2002 in Appeal No 172 of 2002 be varied so that a bench warrant issue for the arrest of the respondent but lie in the Registry until the date upon which the application for special leave to appeal to the High Court is either determined or withdrawn or not proceeded with or until further order.

CULLINANE J: I agree with the order proposed for the reasons of the presiding Judge.

HOLMES J: I agree also.

McPHERSON JA: That will be the order we make.
