

SUPREME COURT OF QUEENSLAND

CITATION: *The Queen v Baden-Clay* [2016] QCA 1

PARTIES: **THE QUEEN**
(applicant/respondent)
v
BADEN-CLAY, Gerard Robert
(respondent/appellant)

FILE NO/S: CA No 188 of 2014
SC No 467 of 2013

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane – Unreported, 15 July 2014

DELIVERED EX TEMPORE ON: 8 January 2016

DELIVERED AT: Brisbane

HEARING DATE: 8 January 2016

JUDGE: Holmes CJ

ORDERS: **Orders delivered ex tempore on 8 January 2016:**

- 1. That the orders previously made by this Court in CA No 188 of 2014 delivered on 8 December 2015 and numbered 3 and 4 be vacated.**
- 2. Instead order that the respondent to the appeal, the Director of Public Prosecutions, file and serve submissions as to sentence within 14 days of any dismissal by the High Court of the application for special leave or any appeal.**
- 3. That the appellant file and serve any submissions as to sentence within a further 7 days of the date of filing and serving of submissions by the respondent.**
- 4. The submissions of each party as to sentence are be sealed and be made available only to members of this Court and the legal representatives of the parties until further order by this Court.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – POWERS OF COURT ON APPEAL – POWER TO SUBSTITUTE VERDICT OR SENTENCE – SUBSTITUTION OF MANSLAUGHTER FOR MURDER – where the respondent was convicted of murdering his wife after trial – where on 8 December 2015 the Court of Appeal

ordered the verdict of guilty of murder be set aside and a verdict of manslaughter be substituted, with procedural orders put in place for the filing and serving of documents in January 2016 to enable the resentencing of the respondent by the Court – where on 4 January 2016 the applicant filed a special leave application to the High Court of Australia seeking to have the orders made by the Court of Appeal be set aside – where on 8 January 2016 the applicant applied to the Court of Appeal to have the orders made for the provision of submissions set aside, with the question of sentence left in abeyance until the conclusion of proceedings in the High Court of Australia – whether the application should be granted

R v Baden-Clay [2015] QCA 265, related

COUNSEL: M R Byrne QC for the applicant/respondent
A Glynn QC for the respondent/appellant

SOLICITORS: Director of Public Prosecutions (Queensland) for the applicant/respondent
Peter Shields Lawyers for the respondent/appellant

THE CHIEF JUSTICE: This court set aside the conviction of murder of the respondent to this application and substituted a conviction of manslaughter. It remains to be determined what sentence should be imposed for that offence, and orders were made requiring submissions from the parties for that purpose.

The applicant Director of Public Prosecutions has applied to have the orders made for the provision of submissions set aside, with the question of sentence left in abeyance until the conclusion of proceedings in the High Court, which are currently in the form of a special leave application. In the alternative, variation of dates for the submissions and an order which would effectively ensure that they were not made public until the resentencing took place were sought.

The reasons given by the applicant for seeking an effective postponement are that there is a prospect of success which would mean that the sentence imposed is ultimately set aside with the conviction, so that time and effort are unnecessarily expended in the resentencing process; with the second argument that there is a prospect of public comment and a possible loss of public confidence if the sentence is set aside with the conviction.

The application is opposed. Mr Glynn, for the respondent, says that his client is entitled to know what sentence is to be imposed on him in respect of his conviction of manslaughter.

I must say, I am unmoved by the applicant's submissions as to the prospect of public comment and a loss of public confidence. If the conviction is set aside, it will simply mean that the High Court has taken the applicant's view of the law, whatever that may be, which is an unremarkable result. Appeals are often successful. It does not mean that the administration of justice has suddenly fallen awry in some way, but that the view of the law taken by the highest Court in the land turns out to be different. And I think it's an unattractive submission that this Court would act in some way contrary to what it might have done simply because of the prospect of public comment. I reject that.

However, I do see merit in the argument that the process of making submissions and determining the sentence which should be imposed for manslaughter may be rendered inutile if the applicant were to succeed in both an application for special leave and an appeal. On the other hand, I see no real prejudice to the respondent, Mr Baden-Clay, in a delay of some months in the determination of his sentence.

I will make these orders then: that the orders previously made by this Court on 8 December 2015, numbers 3 and 4, be vacated. Instead, I will order that the respondent to the appeal, the Director of Public Prosecutions, file and serve submissions as to sentence within 14 days of any dismissal by the High Court of the application for special leave or any appeal and that the appellant file and serve submissions as to sentence within a further seven days of the date for filing and serving of submissions by the respondent. The submissions of each party as to sentence are to be sealed and made available only to members of this Court and the legal representatives of the parties until further order of this Court.