

COURT OF APPEAL

**WILLIAMS JA
KEANE JA
PHILIPIDES J**

**CA No 55 of 2005
SC No 128 of 1996**

THE QUEEN

v

DAVIDSON, John Michael

Applicant

BRISBANE

DATE 05/04/2005

JUDGMENT

MS S M RYAN (instructed by Legal Aid Queensland) for the applicant

MR D MEREDITH (instructed by Director of Public Prosecutions (Queensland)) for the respondent

WILLIAMS JA: The applicant was convicted of murder on the 26th of April 1996. He lodged an appeal against that conviction on the 8th of May 1996 and the appeal was dismissed by the Court of Appeal on the 20th of December 1996. He was, of course, subject to the mandatory life sentence upon his conviction for murder.

Given the provisions of section 671G of the *Criminal Code* as it then stood and section 75 of the *Corrective Services Act* 1988 as it then stood the applicant had to make an election as to the basis on which he would serve his imprisonment pending the determination of the appeal. He made the election pursuant to the statutory provisions to which I have referred to be treated as an unconvicted prisoner on remand. That had the consequence that, unless the Court of Appeal

made a declaration that the period of time between the filing of the notice of appeal and the dismissal of the appeal be time spent pursuant to the sentence, that period would not count as part of the life sentence.

Apparently that matter was overlooked when the decision of the Court of Appeal was handed down on 20 December 1996. In consequence the 225 days between 8 May 1996 and 20 December 1996 will not count as part of the applicant's sentence unless a declaration is now made.

This application is brought before the Court pursuant to section 188 of the *Penalties and Sentences Act* 1992. Previously this Court has dealt with similar situations pursuant to that provision and in my view it is appropriate for the Court to so deal with this matter. In consequence the Court will order that the sentence imposed on 26 April 1996 as confirmed by the Court of Appeal on the 20th of December 1996 be varied by adding thereto a declaration that the 225 days spent in custody between the 8th of May 1996 and the 20th of December 1996 is time spent pursuant to the sentence of life imprisonment.

KEANE JA: I agree.

PHILIPPIDES J: I also agree.