



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### PNJ v THE QUEEN

PNJ was convicted of wounding with intent to cause grievous bodily harm. The charge arose out of a stabbing incident. The victim of his attack died nearly two years after being stabbed and PNJ was then charged with his murder. Today the High Court of Australia held that the bringing of that charge was not unjustifiably oppressive to PNJ, nor would it bring the administration of justice into disrepute.

In September 2002 PNJ stabbed H in the temple with a knife. He was arrested and taken into custody. At trial he was acquitted of attempted murder but convicted of wounding with intent to cause grievous bodily harm. He was sentenced to seven years' imprisonment, with a non-parole period fixed at four years. The victim died in 2004, allegedly as a result of the injuries received in the attack in 2002. In January 2006 PNJ was charged with his murder.

In 2007 section 32 of the *Criminal Law (Sentencing) Act* 1988 (SA) was amended to fix a mandatory minimum non-parole period of 20 years for a conviction for the offence of murder. The amendments apply whether the relevant offence was committed before or after their commencement. The amendments also provided that a court could fix a non-parole period shorter than the mandated period only if satisfied that special reasons existed for doing so. Under section 32A(3)(b) one set of reasons which would constitute "special reasons" would be "if the offender pleaded guilty to the charge of the offence – that fact and the circumstances surrounding the plea".

PNJ's trial for murder has not yet commenced. Having unsuccessfully applied for a permanent stay on the prosecution in September 2006, he made a second application for a permanent stay of the prosecution in February 2008. He alleged the amendments would expose him to being punished twice for the same conduct. This was because, if he were to be convicted and sentenced for murder, he would have largely served the full seven-year term of imprisonment for the original conviction, and any non-parole period for a murder conviction could not be fixed to begin at the time he began serving the sentence for the original conviction. Alternatively PNJ argued he would be denied a free choice about his plea because the only way he could avoid a 20-year non-parole period if he were to be convicted of murder would be if he were to plead guilty prior to the trial. In that event he could argue for a shorter non-parole period under section 32A(3)(b) of the *Sentencing Act*. PNJ's application for a permanent stay of the prosecution was denied at first instance. The Full Court of the Supreme Court of South Australia dismissed his appeal. He applied to the High Court for special leave to appeal against the Supreme Court's decision. His special leave application was referred to the Full Court of the High Court by a panel of three Justices.

The Court unanimously refused special leave. It held that if PNJ were to be convicted of murder then, under section 30 of the *Sentencing Act*, the sentencing judge would be empowered to fix the commencement date of the head sentence and the non-parole period (whether that was the mandated 20 years or a lesser period because special reasons existed to reduce the non-parole period) as the date on which PNJ was first taken into custody. On that basis there would be no abuse of process in prosecuting PNJ for the murder of H. The prosecution would not bring the administration of justice into disrepute, nor would it be unjustifiably oppressive to PNJ.

- *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*