YEO v. ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (B40/2007)

Court appealed from: Court of Appeal, Supreme Court of Queensland

Date of grant of special leave: 21 June 2007

On 3 April 2006 on the application of the respondent, the Supreme Court (per Philippides J) made a continuing detention order in respect of the appellant, Raymond Yeo, pursuant to section 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act"). The appellant was then serving a sentence of two years' imprisonment imposed on 18 April 2002 (cumulative on earlier sentences of three years' imprisonment imposed on 5 April 2001 for 13 sexual offences on two young boys) for two offences of indecent dealing with a child under 12 years old. The appellant also has a previous conviction of carnal knowledge by anal intercourse of an intellectually disabled boy aged 16 years committed in 1993. The appellant was examined by two psychiatrists pursuant to section 11 of the Act, and by a third psychiatrist for assessment of whether the appellant posed a risk if released, all of whom gave evidence before Philippides J. The psychiatrists' opinions were that the appellant's risks of re-offending on release were "high" or "extremely high" and that he had not been rehabilitated whilst in custody. Section 13 of the Act provides that the Court may make a continuing detention order if satisfied by acceptable, cogent evidence to a high degree of probability that the prisoner is a serious danger to the community, defined to mean that there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody. A serious sexual offence includes an offence of a sexual nature involving violence or against children. The appellant appealed to the Court of Appeal.

The Court of Appeal (McMurdo P, Williams JA and Helman J) in separate reasons dismissed the appellant's appeal. The appellant argued that the trial judge had erred by failing to apply the principles expressed in *Chester v The Queen* (1988) 165 CLR 611 and *Buckley v The Queen* (2006) 80 ALJR 605 that a case must be "very exceptional" to warrant continuing detention beyond the sentence imposed. Williams JA distinguished these two authorities on the basis that the indefinite sentence was there imposed at the time of initial sentencing. Helman J (with whom McMurdo P agreed) held that the Act specifies exhaustively the circumstances in which the extraordinary power of indefinite detention should be invoked and, to the extent that *Chester* and *Buckley* are applicable, the principles expressed in those decisions are given effect in the Act without the need to apply a separate test of exceptionality.

The grounds of appeal include:

- Whether the Court of Appeal erred in not finding that the trial judge should have, or did not have sufficient, regard to the principles in *Chester* and *Buckley*, specifically, that the power to sentence a person to indefinite detention must be confined to "very exceptional cases".