



HIGH COURT OF AUSTRALIA

7 April 2020

PELL v THE QUEEN [2020] HCA 12

Today, the High Court granted special leave to appeal against a decision of the Court of Appeal of the Supreme Court of Victoria and unanimously allowed the appeal. The High Court found that the jury, acting rationally on the whole of the evidence, ought to have entertained a doubt as to the applicant's guilt with respect to each of the offences for which he was convicted, and ordered that the convictions be quashed and that verdicts of acquittal be entered in their place.

On 11 December 2018, following a trial by jury in the County Court of Victoria, the applicant, who was Archbishop of Melbourne at the time of the alleged offending, was convicted of one charge of sexual penetration of a child under 16 years and four charges of committing an act of indecency with or in the presence of a child under the age of 16 years. This was the second trial of these charges, the jury at the first trial having been unable to agree on its verdicts. The prosecution case, as it was left to the jury, alleged that the offending occurred on two separate occasions, the first on 15 or 22 December 1996 and the second on 23 February 1997. The incidents were alleged to have occurred in and near the priests' sacristy at St Patrick's Cathedral in East Melbourne, following the celebration of Sunday solemn Mass. The victims of the alleged offending were two Cathedral choirboys aged 13 years at the time of the events.

The applicant sought leave to appeal against his convictions before the Court of Appeal. On 21 August 2019 the Court of Appeal granted leave on a single ground, which contended that the verdicts were unreasonable or could not be supported by the evidence, and dismissed the appeal. The Court of Appeal viewed video-recordings of a number of witnesses' testimony, including that of the complainant. The majority, Ferguson CJ and Maxwell P, assessed the complainant to be a compelling witness. Their Honours went on to consider the evidence of a number of "opportunity witnesses", who had described the movements of the applicant and others following the conclusion of Sunday solemn Mass in a way that was inconsistent with the complainant's account. Their Honours found that no witness could say with certainty that these routines and practices were never departed from and concluded that the jury had not been compelled to entertain a reasonable doubt as to the applicant's guilt. Weinberg JA dissented, concluding that, by reason of the unchallenged evidence of the opportunity witnesses, the jury, acting rationally on the whole of the evidence, ought to have had a reasonable doubt.

On 17 September 2019, the applicant applied to the High Court for special leave to appeal from the Court of Appeal's decision on two grounds. On 13 November 2019, Gordon and Edelman JJ referred the application for special leave to a Full Court of the High Court for argument as on an appeal. The application was heard by the High Court on 11 and 12 March 2020.

The High Court considered that, while the Court of Appeal majority assessed the evidence of the opportunity witnesses as leaving open the possibility that the complainant's account was correct, their Honours' analysis failed to engage with the question of whether there remained a reasonable possibility that the offending had not taken place, such that there ought to have been a reasonable doubt as to the applicant's guilt. The unchallenged evidence of the opportunity witnesses was

inconsistent with the complainant's account, and described: (i) the applicant's practice of greeting congregants on or near the Cathedral steps after Sunday solemn Mass; (ii) the established and historical Catholic church practice that required that the applicant, as an archbishop, always be accompanied when robed in the Cathedral; and (iii) the continuous traffic in and out of the priests' sacristy for ten to 15 minutes after the conclusion of the procession that ended Sunday solemn Mass.

The Court held that, on the assumption that the jury had assessed the complainant's evidence as thoroughly credible and reliable, the evidence of the opportunity witnesses nonetheless required the jury, acting rationally, to have entertained a reasonable doubt as to the applicant's guilt in relation to the offences involved in both alleged incidents. With respect to each of the applicant's convictions, there was, consistently with the words the Court used in *Chidiac v The Queen* (1991) 171 CLR 432 at 444 and *M v The Queen* (1994) 181 CLR 487 at 494, "a significant possibility that an innocent person has been convicted because the evidence did not establish guilt to the requisite standard of proof".

- *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.*