



What has happened with Cardinal George Pell's appeal against child sex abuse conviction?

The high court ruling was not as straightforward as it originally seemed, explains Paul Karp

Paul Karp

Tue 12 Nov 2019 20.10 EST

Cardinal George Pell will get his day in the high court to argue against his conviction on historical child sexual abuse offences.

On Wednesday the full court gathered to announce the results of special leave applications, including Pell's bid to overturn the decision of the Victorian court of appeal.

What did the judges say?

Justice Michelle Gordon said:

In this application, Justice Edelman and I order that the application for special leave to appeal to this Court from the judgment and orders of the Court of Appeal of the Supreme Court of Victoria given and made on 21 August 2019 be referred to a Full Court of this Court for argument as on an appeal. The parties will be made aware of the directions necessary for undertaking that hearing.

So, Pell won the right to appeal?

Justices Gordon and Edelman have referred in the application for special leave to appeal to the full court for argument “as on an appeal”.

This means that technically special leave was not granted, but nor was it refused.

What happens now?

Pell's lawyers will present their case as if special leave had been granted, proceeding with his arguments on appeal. This will look and feel like an appeal.

However, at any point in the case, the justices of the high court can direct Pell's lawyers to make submissions about whether or not he should be granted special leave.

So they're starting with the substantive arguments about why the conviction should be quashed, but Pell has not technically cleared the threshold question of whether the court should hear the appeal.

It's a bit like snakes and ladders - Pell has moved forward a few squares, but at any point could slide back to having to justify why the court should weigh in on the rightness or wrongness of the conviction at all.

Why would the judges decide the special leave application this way?

Special leave to appeal is the high court's means of controlling whether or not it hears a case or not.

By allowing the case to proceed “as on appeal” the court gets the benefit of hearing the substantive arguments without deciding definitively that it wants to make a decision upholding or overturning the Victorian court of appeal decision.

Now the decision will be owned collectively by all five or seven judges who hear the case, not just the two who heard the special leave application.

Is this unusual?

It's not common in the high court for special leave applications to be argued as on appeal but it happens. It is an ordinary process of the court.

What will the judges do now?

There will be directions for a full court hearing, most likely in 2020.

After a substantive hearing the full court will decide to either dismiss the appeal, meaning Pell remains a convicted offender or the appeal is allowed, quashing the conviction and resulting in his release from jail.

America faces an epic choice...

... in the coming year, and the results will define the country for a generation. These are perilous times. Over the last three years, much of what the Guardian holds dear has been threatened - democracy, civility, truth. This US administration is establishing new norms of behaviour. Anger and cruelty disfigure public discourse and lying is commonplace. Truth is being chased away. But with your help we can continue to put it center stage. It will be a defining year and we're asking for your help as we prepare for 2020.