

BASIL STEVEN MARSHALL MIST

v

THE QUEEN

Court: Gault J and Blanchard J

Counsel: R M Lithgow for Applicant
B J Horsley for Respondent

Judgment: 31 May 2005

JUDGMENT OF THE COURT

- A. Leave to appeal is granted.**
- B. The grounds approved in terms of r 29(1) of the Supreme Court Rules 2004 are:**
- (i) Did s 153(1)(b) of the Sentencing Act 2002 require the sentencer to sentence the appellant, aged 22 at the time of sentencing, as if he were aged 20, his age immediately before the commencement date of that Act?**
 - (ii) If not, and if dealt with immediately before that commencement date, would the appellant have been able to be sentenced to preventive detention under s 75 of the Criminal Justice Act 1985, read with s 4(2) of that Act?**

REASONS

[1] Leave to appeal is limited to the above approved grounds. The two other issues sought to be raised do not meet the criteria in s 13 of the Supreme Court Act 2003. The Court of Appeal's refusal to order a determinate sentence followed by extended parole supervision raises no question of principle, being a decision related to the perception of risk in the particular case.

[2] The argument that an appeal to this Court must be heard whenever the Court of Appeal, in allowing a Solicitor-General's appeal against a determinate sentence, imposes preventative detention, is plainly wrong. An appellant has to establish in each individual case that, in terms of s 13, it is necessary in the interests of justice for the Court to hear and determine the proposed appeal. The Act does not authorise the Court to accept a second appeal merely because a preventive detention sentence has been imposed on a first appeal.

[3] It should be emphasised again that appeals against the nature or length of a sentence will only infrequently raise a question of general principle suitable for a second appeal, such as the jurisdiction issues in this case.

Solicitors:
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