

JCW(s) - IIA

Avey, Lisel

From: CDW [REDACTED] >
Sent: Wednesday, 7 December 2011 8:55 PM
To: Avey, Lisel
Cc: Whalley, Justin
Subject: Re: WA v [REDACTED] - Appeal decision

Dear Lisel,

Thank you so much for your email and for taking the time to explain today's result. I know that you have all worked so hard and am sure that you must be disappointed also. We haven't told [REDACTED] yet as he has only just arrived back from overseas this evening.

We will be in touch as we have a number of questions regarding where we go from here.

By the way [REDACTED] has finished his degree so he may not be using the same email address as the one you have included. I believe he uses [REDACTED] I could check if you wish.

Kind regards,

CDW
 [REDACTED]

----- Original Message -----

From: Avey, Lisel
To: [REDACTED]
Cc: Whalley, Justin
Sent: Wednesday, December 07, 2011 4:07 PM
Subject: RE: WA v [REDACTED] - Appeal decision

Dear all

Thank you for giving up your time to attend court this morning. As promised, this is a short email to explain briefly the decision handed down today in the matter of *EPD v The State of Western Australia* [2011] WASCA 264. I've also attached the decision so you can have a look for yourselves if you like.

The appeal against conviction was allowed on the basis of ground 1. Ground 1 was that the trial judge erred by failing to give the jury an adequate Longman direction on counts 1, 2, 3, 4, 5 & 6. A Longman direction is basically where the judge warns the jury that the passage of time made it harder for the accused to test the evidence and present a defence. The Court of Appeal found that:

- (1) The trial judge did not give an unmistakable and firm direction of law concerning the loss of a forensic advantage. The trial judge said that by reason of the delay the accused *may* have lost the opportunity to test the evidence of the complainants (rather than *did* lose the opportunity). Essentially, his warning to the jury was not emphatic enough, and was too general.
- (2) Although his Honour referred to the loss of opportunity to test the evidence of the complainants, he made no reference to the loss of opportunity to marshal a defence.
- (3) His Honour mentioned none of the specific disadvantages that the delay caused the accused.

Therefore the convictions and sentences on counts 1, 2, 3, 4, 5 & 6 were set aside and a new trial has been ordered. The appeal on the basis of grounds 2-9 was refused. There was said to be no merit in any of these grounds.

Because the sentences on counts 1-6 have now been set aside, this affects the sentences imposed for the remainder of the counts, some of which were concurrent on count 1 and 5. Therefore, the sentence for count 11 is

to be served cumulatively on the sentence on count 9 and the remaining sentences are to be served concurrently with each other and count 9. The total term of imprisonment is 2 years and 4 months. He is now eligible for release on parole. This is a matter for the Parole Board and the additionally, the Court of Appeal have noted that depending in the outcome of a retrial on counts 1-6 he may face an additional sentence.

The appeal against sentence was dismissed.

I hope that this makes sense. Please do not hesitate to call me or Justin if you would like any further explanation about any of this. We will be in touch in the coming weeks to discuss where this leaves us and where we go from here. In short, there will be a retrial for the counts that he successfully appealed relating to and though this is of course dependent on their willingness to be give evidence again. The next court date is 20 January 2012. This date is for the trial to be listed again, possibly around April 2012.

Again, I am always available on the phone or by email.

Kind regards,

Lisel Avey | State Prosecutor

Office of the Director of Public Prosecutions for Western Australia
INTERNATIONAL HOUSE Level 5, 26 St George's Terrace Perth WA 6000

REDACTED



DIRECTOR OF PUBLIC PROSECUTIONS

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