

Office of Public Prosecutions Victoria

13 February 2014

High Court Clarifies Prosecution Role in Sentencing Hearings

The High Court of Australia yesterday delivered an important judgment which impacts on the role of prosecutors in the sentencing of accused in the County and Supreme Courts of Victoria.

The High Court determined that it is not the role of the prosecution to provide statements about the available range of sentences to a sentencing judge.

In 2008 the Court of Appeal in Victoria in *R v MacNeil-Brown* held that prosecutors appearing on behalf of the Victorian Director of Public Prosecutions (DPP) were required to prepare submissions about “available ranges” of sentences for an accused, and to present this to the sentencing courts if requested.

DPP John Champion S.C. successfully sought leave to intervene in a Commonwealth matter before the High Court to argue that the prosecution should not provide sentencing ranges. The High Court accepted the DPP’s submissions.

Mr Champion said the ruling was significant and authoritative.

“The decision makes clear that the prosecution’s role is not to provide a sentencing range but to draw the judge’s attention to the sentencing facts that should be found, the relevant principles and comparable sentences,” he said.

“The established legal principle of the prosecutor having a duty to assist the court to avoid falling into error remains unchanged.”

Mr Champion said his office was considering the full implications of the judgment on how the Crown makes submissions on sentencing.

The High Court ruling was delivered in *Barbaro v The Queen*, and *Zirilli v The Queen*.

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