“Binsaris v Northern Territory; Webster v Northern Territory; O’Shea v Northern Territory; Austral v Northern Territory [2020] HCA 22”

Authors: Leanne Collingburn, Priya Kahlon

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In *Binsaris v NT, Webster v NT, O’Shea v NT and Austral v NT* the High Court considered the use of powers of officers at youth detention centres in the Northern Territory. In particular, they considered whether a prison officer was entitled to deploy CS gas, a form of tear gas, at the Don Dale Youth Detention Centre in the Northern Territory on 21 August 2014. The case followed the release of footage in 2016 of the four appellants being exposed to CS gas at the Detention Centre and the 2017 Royal Commission into the Protection and Detention of Children.

The majority found that the use of CS gas by a prison officer at the Don Dale Youth Detention Centre in the Northern Territory was unlawful. The Court allowed the appeals, with costs, and decided that the appellants were entitled to damages in respect of their claims for battery arising out of the unlawful use of CS gas against them.

The appellants, Josiah Binsaris, Keiran Webster, Leroy O’Shea and Ethan Austral, and others were detained in the Behavioural Management Unit of the Don Dale Youth Detention Centre in the Northern Territory. On 21 August 2014, a detainee at the Detention Centre escaped from his cell, damaging property and causing a disturbance. Appellants Josiah Binsaris and Ethan Austral also caused damage to property and caused disturbance but they remained inside their cell. Appellants Keiran Webster and Leroy O’Shea played cards inside their cell. Prison officers were called to assist with the situation and, on the order of the Director of Correctional Services, as recommended by the Deputy Superintendent and Assistant General Manager of the Don Dale Youth Detention Centre, CS gas was deployed by one of the prison officers against the escaped detainee. The appellants were also exposed to the CS gas whilst in their cells.

The appellants brought proceedings claiming that the use of CS gas by the prison officer constituted battery.

The majority made clear statements that a detainee in a youth detention centre, under the Youth Justice Act, is not a prisoner and a youth detention centre is not a prison.

This decision emphasises the differences in the statutory frameworks that apply to prisoners and youth detainees and the framework against which the powers of officers, in youth detention centres, under the Youth Justice Act, are to be assessed. Providing clear indication that the powers afforded to officers in respect of youth detainees were to be strictly read, and absent clear positive authority for the use of CS gas, the deployment of CS gas as against youth detainees at the Don Dale Youth Detention Centre was unlawful.