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The ‘no body, no parole’ scheme in Queensland – clarifying the meaning of ‘remains’

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Under Queensland’s ‘no body, no parole’ scheme, prisoners sentenced for various offences, including homicide, will be denied parole if the body or remains of their victim cannot be located unless the prisoner provides satisfactory cooperation to locate the body.

The ‘no body, no parole’ scheme in the *Corrective Services Act 2006* (Qld) is said to incentivise prisoners to provide what information they can that might assist in the possible locating and recovery of the whole of the victim’s body or remains. Actual recovery is not essential.

‘No body, no parole’ case considers the meaning of ‘remains’

The Court of Appeal case of *Armitage v Parole Board Queensland* [2023] QCA 239 is a significant decision clarifying the meaning of the term ‘remains’ for the purpose of the ‘no body, no parole’ scheme.

Facts of the case

Mr Armitage was sentenced to nine-and-a-half years’ jail in August 2021 for manslaughter and interference with a corpse.

The deceased was last seen alive on 13 December 2013. In April 2014, some human bones were located in the Toolara State Forest in Queensland. The remains had been damaged by fire. Only 80 to 85 per cent of the skeletal remains of the deceased were located. Part of the deceased’s shin bone (tibia), together with both his hands and feet, were missing.

Parole application

In late 2021, Mr Armitage applied to the Parole Board Queensland ('the Board') for a parole order (prior to his parole eligibility in May 2022).

The Board subsequently conducted a hearing in relation to Mr Armitage's application for parole and heard evidence that:

- exposing a human body to the elements (e.g. fire) would mean that the bones would break down in months to years, whereas for a buried body, it would take tens to thousands of years for such a process to occur; and
- it was very normal in relation to bodies left exposed in bushland that animal predation would occur, leading to parts of the body being unable to be located.

Mr Armitage's legal representatives submitted that:

1. he was not a 'no body-no parole' prisoner because the deceased's body had, in fact, been located; and
2. in any event, he had given satisfactory co-operation.

The Board did not accept this because parts of the deceased's body were still missing, and Mr Armitage had not provided any active cooperation. The Board made a 'no cooperation declaration' which effectively precluded Mr Armitage from applying for and being granted parole.

Mr Armitage appealed the Board's decision to the Supreme Court of Queensland.

The original parole application

The original application for parole contended that for the 'no body, no parole' scheme to apply in Mr Armitage's case, the missing part of the body or remains (or at least part of them) must still be in actual existence. If not in actual existence, then they are not a 'no body, no parole' prisoner and the Board is without jurisdiction under the 'no body, no parole' scheme in respect of Mr Armitage.

Her Honour Justice Hindman dismissed the application. Mr Armitage then appealed the decision.

The appeal in the Supreme Court (Court of Appeal)

The Court of Appeal unanimously set aside Her Honour's orders and allowed the appeal, clarifying the statutory construction of the term 'remains' provided for in the Act for the purpose of the 'no body, no parole' scheme.

His Honour Justice Flanagan at [42] - [44] said:

'... it can reasonably be inferred that when a legislature uses a noun to describe a particular thing, as it does here, it assumes that the thing in fact exists. This view is fortified by the ordinary meaning of the word. By reference to the extracts from the Cambridge Dictionary relied upon by

the appellant, the word "remains" when used as a noun explicitly recognises that something will have been used, destroyed, or taken away so as there to be something which remains. In other words, as a matter of logical implication, the requirement that the remains are those that continue to exist and are capable of being located is implicit in, and arises from, the ordinary meaning of the word itself.

It should be observed that if this interpretation is not applied, then the purpose of the "no body, no parole" scheme is largely defeated because no amount of cooperation from a prisoner such as the appellant can ever alter the fact that the remains no longer exist and are incapable of being located.

It follows that on the proper construction of s 175C, the word "remains" refers to those remains that continue to exist and are capable of being located.'

Effectively, the Court confirmed that for the term 'remains' to have meaning, the remains must exist (e.g. they can't have been eaten by an animal or burnt in a fire).

The word 'remains' within the rule must refer to what actually remains of the body and is capable of being located. The rule did not apply to missing body parts which no longer existed.

Get help from a criminal lawyer

Queensland's parole application scheme can be difficult to navigate, and there are frequent changes to the case law which should be considered before making an application.

Armitage v Parole Board Queensland is a significant decision which will greatly assist prisoners who would otherwise be captured by the 'no body, no parole' scheme.

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