

# DRO

Deakin University's Research Repository

Fitz-Gibbon, Kate and O'Brien, Wendy 2016, No prospect of release: Kevin Crump and the human rights implications of life imprisonment, *The Conversation*, February 8.

The published version is available online at **THE CONVERSATION** :

<https://theconversation.com/no-prospect-of-release-kevin-crump-and-the-human-rights-implications-of-life-imprisonment-51435>

©2016, Conversation Media Group

Reproduced by Deakin University under the terms of the [Creative Commons Attribution NoDerivatives Licence](#)

Available from Deakin Research Online:

<http://hdl.handle.net/10536/DRO/DU:30083599>

## No prospect of release: Kevin Crump and the human rights implications of life imprisonment

February 8, 2016 12.44pm AEDT

Every state and territory in Australia permits sentences of life without parole. AAP/Dave Hunt

A NSW court last week dismissed Kevin Crump's latest appeal against his natural life sentence. Crump, who has served nearly 42 years in prison for murder, has been formally denied any prospect of a meaningful life outside prison walls.

The decision provides a timely opportunity to reconsider the viability of terms of life without parole. It further entrenches the use of terms of life without parole in Australia despite moves overseas to restrict – and in some cases eradicate – them.

### Background

Crump was sentenced in 1974 to two terms of life imprisonment for the 1973 murder of Ian Lamb and conspiracy to murder Virginia Morse. Crump was not convicted for Morse's murder as it occurred in Queensland, outside the NSW court's jurisdiction.

Unless expressly sentenced to life imprisonment without parole, prisoners sentenced to life in prison are ordinarily entitled to apply, in time, for a fixed (or determinate) sentence – after which they may apply for release on parole. This is no longer possible for Crump, whose prospects for release are hampered in two ways.

First, Crump's application for sentence determination resulted in the 1997 decision that he serve a minimum of 30 years for Lamb's murder, with a further sentence for the remainder of his natural life. Crump was also sentenced to a further term of 25 years for his role in the conspiracy to murder

### Authors



**Kate Fitz-Gibbon**

Senior Lecturer in Criminology, Monash University



**Wendy O'Brien**

Lecturer In Criminology, Deakin University

Morse.

Second, Crump's initial sentence in 1974 attracted a judicial recommendation that he never be released. This carried no legal force at that time. But since then, the introduction and retrospective application of reform to NSW sentencing law has given this recommendation legal force. This stripped Crump of any meaningful prospect of release.

NSW now denies parole eligibility for prisoners with non-release recommendations until they have first served 30 years, and then been found to be so incapacitated by ill health or imminent death that they are unable to cause harm.

The High Court dismissed Crump's challenge to this legislation in 2012. This left an appeal against the 1997 sentencing determination as his only remaining hope for release.

### **Crump's appeal**

In his latest appeal, Crump sought leave to appeal the 1997 sentence determination on the grounds of "miscarriage of justice" and "severity of sentence". Crump argued that:

- his involvement in Lamb's murder was not "worst category" offending that warranted a term of life imprisonment; and
- the conspiracy to murder and other convictions should not have been taken into consideration in determining Crump's sentence for Lamb's murder.

If these two points were supported, leave to appeal was sought for a determination of Crump's natural life sentence. A revised sentence, it was argued, would be more proportionate to the gravity of the crime committed.

The Court of Appeal found that the sentence imposed on Crump was neither "manifestly or obviously excessive". It also found that while Crump's involvement in Lamb's murder was not "worst" case, the minimum sentence imposed must reflect the overall criminality for all offences.

With Crump's concurrent life sentences upheld, he has now been denied any hope of release.

### **Rethinking life without parole**

Every state and territory in Australia permits sentences of life without parole. Life sentences are imposed with the understanding that, given the gravity of the offence, there is a need to prioritise denunciation, just punishment and community protection.

As such, terms of life imprisonment have come to be associated with the worst of the worst: people who have been convicted of mass murder, killing children, or killing a public figure.

Popular perception may well hold that Crump's brutal crimes warrant a sentence of life without

parole. Recent high-profile homicides committed by parolees have, understandably, exacerbated public concern surrounding the release of serious violence offenders and have engendered support for life terms of imprisonment.

However, cases that generate a groundswell of community fear and outrage can have a pernicious effect on the legal responses affecting those before the law. Concerns surrounding the community's protection, the (in)adequacy of decision-making by state parole boards and the effectiveness of prison as a site for rehabilitation do not justify the denial of human rights for those convicted of the most serious offences.

All persons before the law, regardless of the offence committed, deserve to have their human rights preserved.

The decision to impose whole life orders and remove all possibility of release arguably breaches international human rights standards that expressly ban inhumane or degrading treatment or punishment, and promote proportionality in sentencing.

Australia has ratified the International Covenant on Civil and Political Rights. In Article 10, it expressly provides that the essential aim of prison should be to provide prisoners with treatment aimed at their reformation and reintegration.

In 2013, the European Court of Human Rights ruled that all persons sentenced to life imprisonment have a right to both the prospect of release as well as a review of sentence. It said that a failure to provide both of these rights breaches international standards against inhumane or degrading treatment or punishment.

Australia is by no means bound by this ruling. But, as a country that claims to uphold the human rights of all people – including those before the law – Australia should take notice of international practice.

The Crump decision signals the need for a national review of the use of whole-of-life terms of imprisonment. This would ensure that Australia is apace with emerging ideas about best practice in the European life-sentencing debate. It would also provide an opportunity to introduce sentencing reform that seeks to prevent further human rights infringements for individuals before the law.

