



And then there were just three

THE saga of the Bali Nine is not over with three young Australians still on death row in Indonesia.

Myran Sukamaran, Andrew Chan and Scott Rush still face the firing squad.

Matthew Norman, Si Yi Chen and Tan Duc Thanh Nguyen are believed to have won reprieves while the other three members of the Bali Nine are serving long jail sentences.

But a trend towards mercy is far from being a guarantee and lawyers for Sukamaran, Chan and Rush will be keenly aware of that.

The Supreme Court this week put a lot of weight on Chen, Nguyen and Norman being seen as "mules" and not "ringleaders" in the heroin smuggling organisation.

There is a lot of disagreement about the respective roles and influence of the various members of the Bali Nine.

Some even claim the operation was masterminded by foreign drug syndicate members who have not been caught.

Scott Rush, the youngest of the Bali Nine, has been classed by the courts as a "mule" and has good prospects of getting the same treatment as Chen, Nguyen and Norman.

Sukamaran and Chan, however, have been seen by the court as ringleaders rightly or wrongly.

If the Supreme Court continues in this view, it will be much harder for them to get mercy although the outcome will always be unpredictable.

This is because Indonesia, like many European countries, does not have a formal system of precedent and judges are not bound by earlier decisions.



The PK final appeals are decided by a panel of three judges chosen from the 50 or so judges of the Supreme Court.

One of the judges in this week's decision, Nyak Pha, is reported as saying he was personally opposed to the death penalty.

However, there is no way of knowing if he will be chosen for the next appeal panel.

Indonesia's Constitutional Court responded to an application by members of the Bali Nine late last year by recommending that existing death penalties should remain, but death sentences in future should be automatically commuted to life in prison, subject to "good behaviour".

Now the Supreme Court has followed suit, slowly moving Indonesia away from the death penalty.

This is by contrast to Indonesia's near-neighbours Singapore and Malaysia, where mandatory death sentences remain for even very small amounts of narcotics.

And if Sukamaran, Chan or Rush lose their appeal or review, known as a PK, there is still one further step.

They can appeal for clemency to Indonesia's President Susilo Bambang Yudhoyono.

The President has often said he will not help serious drug offenders.

But Indonesia's anti-death trend offers some hope.

If President Yudhoyono wins next year's presidential elections, and the Bali Three are still on death row, he may have more political room to move and might even feel able to stare down any accusations of "going soft" on drugs.

Either way, there is still a long way to go before Australia can be confident all of the Bali Nine will escape an Indonesian firing squad.

And what does the future hold those who end up with life in prison for their role in trying to smuggle almost 10kg of heroin from Bali to Australia?

The news is not all bad. Remissions available in the Indonesian jail system could mean "life" could be only 20 years or even less.

The Supreme Court's decision this week is a reflection of the slow process of judicial reform in Indonesia.

The country is making a difficult transition from corrupt authoritarianism to transparent democracy.

There are more and more cases where the Supreme Court, led by reformist Chief Justice Professor Bagir Manan, is getting controversial decisions right at the "death knock".

Lets hope all these changes continue. No one thinks the Indonesian justice system is OK as it is: not prisoners caught up in it or the lawyers manipulating it and not even the judges who run it.

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Rush to judgment: Scott Rush, one of the three Bali Nine still under the death sentence, is led away from court