

FARUK ORMAN

v

THE QUEEN

Outline of submissions to be made on 26 July 2019 on behalf of Mr Orman

1. Faruk Orman (**the appellant**) was arrested and taken into custody on 22 June 2007. Now 37, he has spent 4,417 days¹ – more than 12 years – in gaol for a crime he has steadfastly maintained he did not commit.

2. On 26 July 2019, it will be submitted on the appellant's behalf that:
 - 2.1. The Director's concession² ought be accepted as having been properly made.

 - 2.2. The Court could proceed to determine the appeal on the facts that inform that concession. While it might be expected that – with more time – more evidence would be available to the appellant,³ it is neither in his interests nor in the interests of the administration of criminal justice for the appeal to be prolonged beyond the point at which evidence before the Court establishes that there has been a substantial miscarriage of justice. That point has been reached.

 - 2.3. If the concession is accepted:

¹ To 26 July 2019.

² Respondent's Position on the Matter Referred, 24 July 2019, [61], [68] and [69].

³ For example, it might be expected that information that would inform the determination as to whether there was a substantial miscarriage of justice in his case will continue to emerge as the Royal Commission Into the Management of Police Informants continues to do its work.

2.3.1. The appeal ought be allowed,⁴ the murder conviction returned on 29 September 2009 ought be set aside,⁵ a judgment of acquittal ought be entered⁶ and an indemnity certificate ought be granted.⁷

2.3.2. It would not be necessary or desirable for (or open to) the Court – without further evidence (and litigation), which could take a not insignificant amount of time to obtain (and argue) – to determine the disputed allegations.⁸ The appellant does not retract those allegations. It might be expected that those allegations will be the subject of evidence and findings in other proceedings (not before the Court), such as the Royal Commission Into the Management of Police Informants.

2.4. If the Court is not in a position to accept the concession on 26 July 2019, bail ought be granted. Exceptional circumstances are made out by a combination of the concession (and the facts relied on by the Director as informing the concession) and the matters agitated in the affidavit affirmed by the appellant’s solicitor Ruth Parker on 1 July 2019 (**the affidavit**). It is understood that the Director would consent to bail being granted if the Court is not (on 26 July 2019) in a position to proceed to orders determining the appeal in terms that reflect the concession.

3. There has been a substantial miscarriage of justice in this case, a substantial miscarriage which has now come to light in spite of the steps that Victoria Police – in many proceedings over many years – have taken to resist disclosure. While

⁴ *Criminal Procedure Act 2009* (Vic), s 276(1).

⁵ *Criminal Procedure Act 2009* (Vic), s 277(1).

⁶ *Criminal Procedure Act 2009* (Vic), s 277(1)(b).

⁷ *Appeal Costs Act 1998* (Vic), s 14(1).

⁸ Respondent’s Position on the Matter Referred, 24 July 2019, [9]-[24].

the facts are disturbing, and the consequences of those facts have for the appellant been incalculably tragic, it should also be acknowledged that a number of people have taken steps to remedy that wrong. Although this case exposes the vulnerability of the administration of criminal justice when an officer of the Court is prepared to flagrantly disregard their duties, it also underscores the capacity of the law to redress injustice when it occurs. To that end, and without being exhaustive, it is on behalf of the appellant important to note the role of:

- 3.1. The former Director of Public Prosecutions, Champion J, for the steps that he took to ensure that disclosure to those who may have been affected by Nicola Gobbo's misconduct was properly made.
 - 3.2. The Attorney-General for the State of Victoria, who referred this matter to the Court within a matter of months after the appellant commenced a petition for mercy.
 - 3.3. The Director and the Court. The referral to the Court was made one month ago (on 26 June 2019), and the appeal has proceeded with remarkable expedition since that time.
 - 3.4. The appellant's solicitor, who has been persistent in pressing for disclosure and who has undertaken a significant amount of work to protect the appellant's interests, including for many years on a *pro bono* basis.
4. There is a significant public interest in these proceedings being heard and determined in an open and transparent manner. To that end, no objection (subject to instructions) would be taken to the affidavit,⁹ the Director's

⁹ Despite the Director's submission that "the Crown does not accept the factual basis for the majority of the allegations" (Respondent's Position on the Matter Referred, 24 July 2019, [9]), it appears that issue is only taken with matters referred to in two paragraphs – [34] and [36] – of the affidavit. The extent of the dispute is made plain in the Director's submission.

submission¹⁰ and this outline being made publicly available. Further, no objection (again subject to instructions) would be taken to the hearing on 26 July 2019 being live-streamed.

Date: 25 July 2019

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Instructed by:
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¹⁰ Respondent's Position on the Matter Referred, 24 July 2019.