



Summary of Judgment

JASON JOSEPH ROBERTS v THE QUEEN

[2021] VSCA 28

26 February 2021

The Court of Appeal (Maxwell P, Niall and Emerton JJA) today dismissed an appeal by Jason Roberts against a decision refusing him bail pending his retrial on two charges of murder.

Background

On 15 August 2000, the appellant was arrested and charged with murdering two police officers. On 31 December 2002, he was convicted of both charges of murder. On 24 February 2003, he was sentenced to life imprisonment, with a non-parole period of 35 years. Successive applications for leave to appeal to the Court of Appeal and the High Court failed.

In 2019, the appellant commenced fresh proceedings in this Court under pt 6.4 of the *Criminal Procedure Act 2009*, seeking leave to appeal on the ground that his trial had been vitiated by non-disclosure of relevant evidence. On 10 November 2020, the appeal against conviction was allowed. The Court quashed the murder convictions and ordered a retrial on both charges.

The appellant then applied for bail pending the retrial. Because he is charged with murder, the bail judge was obliged to refuse the application unless satisfied that 'exceptional circumstances exist that justify the grant of bail'. The judge was not so satisfied and the application for bail was refused.

The Appeal

The appeal was brought on two grounds; first, that there was specific error in the decision to refuse the bail application, and, secondly, that it was not reasonably open to the judge in the circumstances of the case to refuse the application.

The Court held that there was no specific error. The bail judge's construction and application of the relevant provisions was entirely orthodox, and consistent with the applicable authorities. Secondly, as to unreasonableness, the Court held that the judge took into account all of the matters relied on by the appellant and that it was well open

to the judge to conclude that there did not exist 'exceptional circumstances that justify the grant of bail'.

The Court said:

What was said to justify the grant of bail was the injustice constituted by the corruption of his trial, and the personal hardship which he is said to have experienced during the 20 years of custody which followed. According to the submission, the grant of bail should be responsive to and reflective of that past injustice and hardship.

In our view, it was well open to the judge to reject that submission. Those matters did not, as the appellant submitted, compel the conclusion that bail was justified. Understood by reference to the jurisprudence on 'exceptional circumstances', his Honour was not obliged to view the past events on which the appellant relies as making it unjust for his pre-trial incarceration to continue.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.