



## Summary of Judgment

### ANTONIOS MOKBEL v THE QUEEN

[2021] VSCA 94

16 April 2021

Today the Court of Appeal, by majority (Beach and Osborn JJA), ordered a retrial of Antonios Mokbel on a charge of being knowingly concerned in the importation of a traffickable quantity of cocaine.

Mr Mokbel was found guilty of that offence in 2006 and sentenced to 12 years' imprisonment. On 15 December 2020, this Court set aside the conviction, following a concession by the Commonwealth Director of Public Prosecutions that it could not stand.

The Director conceded that there had been a miscarriage of justice resulting from the conduct of Ms Nicola Gobbo, who represented Mr Mokbel in relation to the importation charge at the same time as she was providing information about him to Victoria Police, in her capacity as a registered police informer.

Counsel for the Director also informed the Court on 15 December 2020 that the Director had determined not to conduct a retrial on the importation charge.

The conviction having been set aside, the Court had to decide whether there should be an order for a retrial on the importation charge or whether, instead, a 'judgment of acquittal' should be entered. Those are the alternatives provided for by s 326E(1) of the *Criminal Procedure Act 2009*.

Beach and Osborn JJA concluded that a retrial should be ordered, saying:

The fact that there will be no retrial does not make an order for due process futile. An order for retrial will remit the decision as to further prosecution of this matter to the proper decision maker in accordance with the principles stated in *Dyers, Thomas and Walker*. It will also result in a qualitatively different disposition of the proceeding from an acquittal.

Their Honours then said:

Any consideration of practical futility cannot be allowed to override the considerations of principle governing the making of the appropriate order in the circumstances. In

the present case, we have determined that it is not appropriate to order an acquittal. Notions of practical futility cannot be engaged so as to require this Court to make an order that it considers is not appropriate on the authorities and in all the circumstances.

Justice Maxwell considered that a judgment of acquittal should be entered. His Honour said that:

The most significant consideration, in my view, is that the appellant has already served the entirety of the 12 year head sentence imposed on him for the importation offence. An order for retrial is not, therefore, necessary to vindicate the objectives of the criminal law. That conclusion is reinforced by the fact that the Director has already decided – as she informed the Court last December – that there will be no retrial even if one is ordered.

It is important to emphasise that, unlike the acquittal which results when a jury returns a not guilty verdict, the entry of a judgment of acquittal in these circumstances says nothing about the appellant's guilt. Indeed, it is common ground that there is sufficient evidence to support a conviction on the importation charge. Rather, the judgment of acquittal gives formal expression to the appellate court's conclusion that there should be no retrial.

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**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.