



## Summary of Judgment

### *Manodh Marks v The Queen [2019] VSCA 253*

8 November 2019

The Court of Appeal (Justice Whelan, Justice Emerton and Justice R Osborn) today allowed an appeal against sentence by the applicant, Manodh Marks, who in June 2018 was sentenced in the County Court to 12 years' imprisonment with a non-parole period of nine years for the offence of attempting to take or exercise control of an aircraft making an international flight by threat of force. The Court of Appeal substituted a sentence of eight years' imprisonment with a non-parole period of five years for the original sentence.

#### **Facts**

On 31 May 2017 the applicant boarded a Malaysian Airlines flight to Sri Lanka via Kuala Lumpur at Melbourne Airport. Shortly after take-off, the applicant removed a Bluetooth speaker and a battery pack from his luggage. He claimed to have a bomb, demanded to speak with the pilot, said he was working with others, and threatened to destroy the aircraft. The applicant was restrained and the flight returned to Melbourne Airport, where the applicant was arrested.

In the months leading up to the offending, the applicant had been consuming illicit drugs and displaying erratic behaviour. He had been admitted to psychiatric wards twice, with the second admission ending only hours before the offending. The applicant had consumed methamphetamine en route to Melbourne Airport. Shortly after take-off he heard screaming voices which caused him to believe the plane was going to crash. His offending occurred as an attempt to force the plane to return to Melbourne Airport to prevent it from crashing. Statements made to those on board at the time confirmed he believed he was trying to save them.

#### **Findings**

The Court of Appeal found that while the sentencing judge took into account the effect of the offending on the passengers and cabin crew (a consideration unaffected by the fact that there was a threat and no real bomb), the sentencing judge otherwise treated the offending as having equivalent gravity to the use of a real bomb. The Court of Appeal found that the relative gravity of the offence was affected by the fact that the threat was made by way of a 'trick' rather than an actual bomb.

The Court of Appeal also considered the applicant's mental condition, and found that in the specific circumstances of the case, the applicant's psychotic state should be regarded as reducing his moral culpability – despite it being drug induced.

Medical evidence established that the applicant was in an early, fragile state of partial recovery following earlier psychotic episodes at the time of discharge on 31 May 2017, which would have rendered him particularly sensitive to the psychosis inducing effects of the methamphetamine he consumed. It also established that the applicant would not have known or anticipated the full extent of the negative consequences of consuming methamphetamine before the flight.

The applicant's psychotic state meant that his suitability as a vehicle for general deterrence was somewhat reduced. It also bore on the question of specific deterrence. Medical evidence established that the applicant had developed insight into his offending after treatment and abstinence from illicit drugs whilst in custody.

Having regard to these factors, and others including the applicant's relative youth, rehabilitation prospects and guilty plea, the Court of Appeal found that the original sentence was manifestly excessive.

The Court of Appeal granted leave to appeal, allowed the appeal, and substituted a sentence of eight years' imprisonment with a non-parole period of five years for the original sentence.

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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.**