



Summary of Judgment

MOHAMED v THE QUEEN

[2022] VSCA 136

13 JULY 2022

Today the Court of Appeal (Maxwell P, Emerton and Sifris JJA) allowed an appeal against sentence by Ahmed Mohamed. As the Court explained:

This is a most unusual sentence appeal. As will appear, the applicant was sentenced twice within a matter of months for two separate terrorism offences. On the first occasion, in July 2019, he was sentenced to 22 years' imprisonment. On the second occasion, in November 2019, he was sentenced to 26 years' imprisonment.

Those are, plainly, very substantial sentences of imprisonment. Yet the applicant has not sought leave to appeal against either sentence. The only complaint he now brings to this Court concerns the order for cumulation made on the second occasion. The judge ordered that 16 years of the second sentence should be served cumulatively on the first sentence of 22 years, giving a total effective sentence of 38 years.

The applicant makes no separate attack on the non-parole period of 28 years and 6 months, as it represented the statutorily-prescribed proportion of the head sentence. The non-parole period would need to be adjusted downwards proportionately should the challenge to the total effective sentence succeed.

The question before the Court concerned the sentencing principle of totality, which was explained recently in *Director of Public Prosecutions v Bowen*:¹

The principle of totality is, essentially, a principle of proportionality. Put another way, totality is a particular expression of the foundational sentencing principle that a sentence should be proportionate to the criminal conduct for which it is imposed. In the ordinary case where sentence is to be imposed for multiple offences, the principle of totality requires the court to ask itself whether the proposed total effective sentence is proportionate to the aggregate criminality involved in all of the offending.

¹ [2021] VSCA 355, [7]–[8].

To comply with totality, a sentence must satisfy all sentencing objectives applicable to the entirety of the offender's criminal conduct. In the present case, the Court said:

there are other sentencing objectives of great significance. Foremost amongst them, in our view, is the need to maximise the applicant's prospects of rehabilitation. When attention is directed to rehabilitation, the sentencing court is not – as is sometimes misleadingly suggested – giving priority to the private interests of the offender. Rather, the court is concerned with the community's interest in minimising the risk of further offending following the completion of the sentence. Self-evidently, that objective – of reducing the risk of reoffending – is of particular importance in a case like the present, where the offender has committed offences of such seriousness.

The Court concluded that the head sentence of 38 years infringed the principle of totality:

Central to that conclusion is the vital public interest in promoting the applicant's rehabilitation, on which protection of the community depends. As will appear, the judge was satisfied that the applicant had renounced his extremist ideology and had 'reasonable prospects of rehabilitation'. The applicable sentencing objectives can, in our view, be sufficiently served by a lower head sentence (32 years) and non-parole period (24 years).

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.