



## Summary of Judgment

### SINGH v THE QUEEN

[2022] VSCA 178

25 August 2022

Today, the Court of Appeal (Emerton ACJ, Kyrou and T Forrest JJA) allowed an appeal against sentence by Mr Mohinder Singh and re-sentenced him to a lower sentence on the basis of fresh evidence that was not before the sentencing judge. The fresh evidence was that, nine days after he was sentenced, the police accepted Mr Singh's longstanding offer to cooperate with the authorities by giving evidence in the criminal trial of his supervisor, Mr Simiona Tuteru.

The Court of Appeal held that, because the offer was not accepted prior to Mr Singh's sentence, he was deprived of the opportunity of receiving moderation in his sentence based on the important principle of public policy that offenders who assist authorities in the investigation and prosecution of other accused persons are entitled to a sentencing benefit. That principle is recognised by section 5(2AB) of the *Sentencing Act 1991*.

On 14 April 2021, Mr Singh was sentenced for four charges of culpable driving causing death, three charges of trafficking in a drug of dependence and one charge of possession of a drug of dependence, as well as related summary offences of dealing with property suspected of being the proceeds of crime and possession of cartridge ammunition.

The charges stemmed from an incident on the Eastern Freeway on 22 April 2020 when a truck driven by Mr Singh collided with four Victoria Police officers, two police vehicles and a Porsche. All four officers were killed in the crash.

After pleading guilty to all charges, Mr Singh was sentenced to a total effective sentence of 22 years' imprisonment with a non-parole period of 18 years and six months.

Mr Singh sought leave to appeal against his sentence on eight grounds. The Court of Appeal granted leave to appeal and allowed the appeal on one ground (ground 7), which contended that, after the sentencing judge sentenced Mr Singh, the abovementioned fresh evidence became available, which was said to be highly relevant to the exercise of the sentencing discretion.

Mr Tuteru has been charged with four charges of manslaughter in relation to the events that took place on 22 April 2020. On 13 May 2020, Mr Singh offered to cooperate with police by giving evidence in relation to the charges against Mr Tuteru. That offer was repeated on 29 October 2020 and remained open at the time Mr Singh was sentenced on 14 April 2021.

The police did not accept Mr Singh's offer of cooperation before he was sentenced but, nine days after his sentence, the police informed his solicitors that they accepted the offer. It was therefore

argued on behalf of Mr Singh that he did not have the benefit of his cooperation with police when he was sentenced and that this fresh evidence should lead to the sentencing discretion being reopened by the Court of Appeal.

The Court of Appeal accepted this argument. It found that both the sentencing judge and Mr Singh's lawyers were deprived of the opportunity to fully appreciate the mix of factors that were relevant to the exercise of the judge's sentencing discretion. The fact that Mr Singh was required to provide a statement and give evidence at the trial of Mr Tuteru engaged the public policy relating to offenders who cooperate with the authorities and was a significant matter relevant to the judge's sentencing discretion. In reaching that conclusion, their Honours rejected the following submissions made by the respondent:

- 1 The submission that the evidence is not 'fresh'. Their Honours held that, although Mr Singh advised the police before he was sentenced of his willingness to cooperate in the trial of Mr Tuteru, it was not until nine days after the sentencing of Mr Singh that the police advised his solicitors that they intended to call him as a witness and take a statement from him. As a result of the above sequence of events, Mr Singh was denied the opportunity to inform the sentencing judge of the true significance of his cooperation, and his counsel was precluded from arguing that he was entitled to a specific sentencing benefit for his cooperation.
- 2 The submission that a sentencing benefit was not available to Mr Singh because he was not a co-accused of Mr Tuteru.
- 3 The submission that Mr Singh's cooperation is of minimal benefit. Their Honours held that Mr Singh's statement, evidence at the committal and proposed evidence at Mr Tuteru's trial are relevant and meaningful because Mr Singh is a central witness to relevant events.
- 4 The submission that Mr Singh has not placed himself at risk or is not in a different position to any other witness. Their Honours accepted that prisoners who cooperate with prosecution authorities are generally at greater risk of harm than ordinary prisoners.
- 5 The submission that Mr Singh could simply have volunteered a statement and undertaking to police when he made his plea. Their Honours held that, whilst this argument is theoretically correct, it ignores the significance of the fresh evidence. Had Mr Singh simply volunteered his assistance, in the absence of prosecutorial or police acceptance of it, it would likely have been viewed by the sentencing judge as a shallow gesture, devoid of any proper basis upon which its value could be measured.
- 6 The submission that obtaining an undertaking from Mr Singh to cooperate with the authorities in the prosecution of Mr Tuteru was a procedural impossibility because the *Criminal Procedure Act 2009* is silent regarding sanctions for a breach of an undertaking to the Court of Appeal, as opposed to a breach of an undertaking to the originating court. Their Honours held that the Court of Appeal can receive such an undertaking and, if it is breached, the Court has wide powers to deal with contempts of court that interfere with the administration of justice.

In allowing the appeal on the basis of the fresh evidence that was not before the sentencing judge, their Honours stated that they regarded the sentencing judge's reasons for sentence as impeccable.

The Court of Appeal re-sentenced Mr Singh to a total effective sentence of 18 years and six months' imprisonment with a non-parole period of 14 years and six months.

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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.