



Summary of Judgment

ANTONIOS MOKBEL v THE KING

[2023] VSCA 40

7 March 2023

In March 2006, Antonios Mokbel, the appellant, having been convicted by a jury of one charge of being knowingly concerned in importing a traffickable quantity of cocaine, was sentenced to 12 years' imprisonment with a non-parole period of nine years.

On 3 July 2012, after pleading guilty, the appellant was sentenced on one charge of trafficking a drug of dependence in an amount not less than a large commercial quantity, one charge of incitement to import a prohibited import and one charge of trafficking a drug of dependence in an amount not less than a large commercial quantity, to a total effective sentence of 30 years' imprisonment with a non-parole period of 22 years. In imposing that sentence, the sentencing judge took into account the sentence imposed on the appellant in March 2006.

In December 2020, the Commonwealth Director of Public Prosecutions ('CDPP') conceded that, as a result of the activities of a former barrister, Nicola Gobbo, there had been a substantial miscarriage of justice in relation to the appellant's 2006 trial; and the appellant's 2006 conviction could not be allowed to stand. As a result, the Court of Appeal immediately set aside the appellant's 2006 conviction and sentence. While the Court of Appeal ordered a retrial of the charge which led to the 2006 conviction and sentence, in April 2021, the CDPP filed a notice of discontinuance of that proceeding.

Section 326E(3) of the *Criminal Procedure Act 2009* provides for the variation of a sentence which, when it was imposed, took into account an earlier sentence for an offence if the conviction for that offence is subsequently set aside.

As a result of the setting aside of the 2006 conviction and sentence, the appellant spent a little over five years in custody which is not referable to any conviction or sentence imposed upon him. That, along with other subsequent changes in the appellant's circumstances (including the effects of a serious head injury suffered as a consequence of an assault committed on him in 2019), was a matter that was relevant in determining whether, and to what extent, the appellant's 2012 sentence should now be varied following the setting aside of his 2006 conviction.

Today, the Court of Appeal determined that the appellant's sentence should be varied from the previous total effective sentence of 30 years' imprisonment with a non-parole period of 22 years, to a new total effective sentence of 26 years with a non-parole period of 20 years. In varying the appellant's sentence, the Court declared that the appellant has already served a period of 347 days (when he was held in custody in Greece in 2007/2008), together with the period he has spent in custody between 3 July 2012 and today, pursuant to this sentence.

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 full reasons for judgment.