



Summary of Judgment

Mokbel v The King [2025] VSCA 62

4 April 2025

The Court of Appeal (Emerton P, Osborn JA and Jane Dixon AJA) today granted bail to Antonios Mokbel pending determination of his applications for leave to bring a second appeal to set aside convictions he sustained in 2012. Those convictions were for drug offences investigated and prosecuted as Operations Quills, Orbital and Magnum. Mr Mokbel pleaded guilty to those offences as part of a global plea deal in which a number of other prosecutions were discontinued.

In support of his application for bail, Mr Mokbel contended that his situation was exceptional because the circumstances in which he pleaded guilty involved fundamental misconduct in the manner in which evidence was procured against him by Victoria Police, coupled with fundamental misconduct by Nicola Gobbo when acting as his legal advisor, and the failure by the authorities to disclose such misconduct prior to his pleas.

This misconduct was identified by Justice Elizabeth Fullerton during hearings conducted between February and November 2024 into the conduct of Nicola Gobbo and Victoria Police which is the subject of Mr Mokbel's proposed grounds of appeal.

Justice Fullerton made detailed findings as to the manner in which Ms Gobbo's improper conduct affected the production of evidence against Mr Mokbel with respect to the Orbital and Quills prosecutions and in other matters. Justice Fullerton found that non-disclosure of evidentiary matters materially affected Mr Mokbel's capacity to evaluate the nature and strength of the prosecution case against him at the time he entered into the global plea bargain.

Her Honour also made findings with respect to informing by Ms Gobbo during the course of the extradition proceedings.

The Court's decision to grant bail pending the hearing and determination of Mr Mokbel's appeal must be understood in the context of Justice Fullerton's findings.

The Court was satisfied that Mr Mokbel had established truly exceptional circumstances as the basis of his application for bail. As Justice Fullerton found, in the absence of disclosure of Nicola Gobbo's conduct bearing on the procurement of evidence adverse to Mr Mokbel and the conduct of the extradition proceedings, Mr Mokbel was in no position to properly assess whether it was in his best interests to agree to the global plea deal which he entered into. In the circumstances found by Justice Fullerton, he was deliberately misled and deceived as to the strength and nature of the prosecution cases.

It follows that he has a very strong case that the deliberate concealment and non-disclosure of Nicola Gobbo's actions should be regarded as vitiating the plea agreement and the pleas of guilty entered pursuant to it. In turn, he has a very strong case that his convictions in the Quills, Orbital and Magnum matters should be quashed.

Furthermore, in 2019 Mr Mokbel suffered a serious brain injury as a result of an assault which occurred whilst he was in custody. A secondary consequence of the assault is that Mr Mokbel has been required to serve his imprisonment effectively in isolation since his release from hospital. It follows that the very protracted proceedings to which Mr Mokbel has been exposed as a result of the non-disclosure of relevant evidence by Victoria Police and the Victorian Director of Public Prosecutions have dragged on over a period of significant personal hardship for him. The consequences of the delay may not in themselves constitute exceptional circumstances, but they add to the primary matters the Court relied on in relation to this issue.

The Court was not persuaded a grant of bail would give rise to an unacceptable risk of breach of bail for the following reasons:

- The most concerning aspect of Mr Mokbel's history is his breach of bail in 2006. At that time his prospects of success in respect of the charges he faced were poor. The current situation is fundamentally different and offers him significantly more positive prospects. He has a clear incentive to remain in the jurisdiction and to see out the end of the process that began nearly 10 years ago;
- The 2006 breach of bail was, with hindsight, spectacularly expensive and spectacularly unsuccessful. Mr Mokbel has since spent some 18 years in custody. Much of this time has been spent in harsh conditions. This is likely to have had some effect of deterrence;

- It is 19 years since the events in 2006. Mr Mokbel has aged since 2006 and has suffered a traumatic brain injury. The medical reports filed on his behalf show that he is not the man that he once was; and
- The grant of bail can be buttressed by conditions which ameliorate (but cannot completely remove) the risk of future breach of bail.

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.