

20/2/08

X

Criminal Appeal Act 1912

MSK v Regina – No. 2004/1711
MAK v Regina – No. 2004/1712
MAK v Regina – No. 2004/2573
MSK v Regina – No. 2004/2575
MMK v Regina – No. 2005/3
MRK v Regina – No. 2005/885



Applicant: John Fairfax Publications Pty Limited
First Respondent: MSK
Second Respondent: MAK
Third Respondent: MMK
Fourth Respondent: MRK
Fifth Respondent: Regina

Affidavit

On 25 August 2006, I, Sarah Nicole Easton, care of Freehills, Level 32, MLC Centre, Martin Place, Sydney, New South Wales, Solicitor, say on oath:

1. I am an employee of Freehills, and I assist Leanne Norman, the solicitor for the applicant, with the conduct of this application on the applicant's behalf.
2. I have read the following material, to which either the First, Second, Third or Fourth Respondent was a party:
 - a. New South Wales Supreme Court Judgments of Justice Sully dated 11 September 2003 and 22 April 2004 in proceedings:
 - (i) Regina v MAK (SC70002/03)
 - (ii) Regina v MSK (SC70201/03)
 - (iii) Regina v MRK (SC70202/03)
 - (iv) Regina v MMK (SC70203/03)
 - b. New South Wales Court of Criminal Appeal Judgment of Justices Mason, Wood and Barr dated 6 September 2004 in proceedings:
 - (i) MSK v Regina (CCA 1711/2004)
 - (ii) MAK v Regina (CCA 1712/2004)
 - c. High Court of Australia transcript of hearing before Justice Kirby on 7 January 2005, in proceedings:
 - (i) MAK v The Queen (S368/2004)
 - (ii) MSK v The Queen (S369 of 2004)
 - d. High Court of Australia transcript of hearing before Justices McHugh, Gummow and Heydon on 4 February 2005 in proceedings:
 - (i) MAK v The Queen (S368/2004)
 - (ii) MSK v The Queen (S369 of 2004)
 - e. New South Wales Court of Criminal Appeal Judgment of Justices Barr, Bell

A handwritten signature in dark ink, appearing to read "Sarah Nicole Easton".

A handwritten signature in dark ink, appearing to read "Leanne Norman".

and Hall dated 24 March 2005 in proceedings:

- (i) Regina v MAK (SC2003/158)
- (ii) Regina v MSK (SC2003/3)

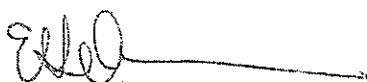
- f. New South Wales Court of Criminal Appeal Judgment of Justices Spigelman, Grove and Hall dated 4 August 2005 in proceeding:
 - (i) MRK v Regina (CCA 2005/885)
- g. New South Wales Court of Criminal Appeal Judgment of Justices Spigelman, Grove and Hall dated 4 August 2005 in proceeding:
 - (i) MMK v Regina (CCA 2005/3)
- h. New South Wales Court of Criminal Appeal Judgment of Justices McClellan, Grove and Hall dated 4 November 2005 in proceedings:
 - (i) MAK v Regina (CCA 2004/2573)
 - (ii) MSK v Regina (CCA 2004/2575)
 - (iii) MMK v Regina (CCA 2005/3)
- i. New South Wales Supreme Court Judgment of Justice Hidden in proceedings:
 - (i) Regina v MSK (SC2003/158)
 - (ii) Regina v MAK (SC2003/3)
 - (iii) Regina v MMK (SC2003/149)

3. I have prepared, on the basis of that material and enquiries I have made of the New South Wales Supreme Court Registry:

- a. a chronology of events, which is Annexure A to this affidavit.
- b. a summary of convictions of each of the respondents, which is annexure B to this affidavit.


Sarah Nicole Easton

Sworn at Sydney
before me:



Name: Elizabeth Kay Helou

Capacity: Solicitor of the Supreme Court of NSW
who has in force a certificate issued
under Part 3 of the Legal Profession
Act, 1987

Address: c/- Freehills, MLC Centre, Martin Place,
Sydney, NSW 2000

Annexure A

THIS and the following 7 pages
forms the Annexure marked "A"
referred to in the Affidavit of
Sarah Nicole Easton sworn before
me on 26 August 2006.

EWB

Date	Event	Proceeding Numbers
15/09/2002	MRK and MMK are arraigned	SC70202/03 Regina v MRK SC70203/03 Regina v MMK
11/09/2003	Sully J orders that the proceedings against MAK and MSK are to be heard separately to the proceedings against MRK and MMK as a result of MAK and MSK being self represented.	SC70201/03 Regina v MSK SC70002/03 Regina v MAK SC70202/03 Regina v MRK SC70203/03 Regina v MMK
13/10/2003	The hearing of proceedings against MRK and MMK before Sully J concludes. Both MRK and MMK, who were juveniles at the time of the offences, were charged with: <ul style="list-style-type: none"> 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900; and 2 counts of contravention of s86(2) of the <i>Crimes Act (NSW)</i> 1900. 	SC70202/03 Regina v MRK SC70203/03 Regina v MMK
23/10/2003	MSK and MAK are arraigned	SC70201/03 Regina v MSK SC70002/03 Regina v MAK
27/11/2003	The hearing of proceedings against MSK and MAK before Sully J concludes. MSK and MAK were jointly charged with: <ul style="list-style-type: none"> 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900. 	SC70201/03 Regina v MSK SC70002/03 Regina v MAK
20/02/2004	Justice Sully commences sentencing hearing in proceedings against MRK, MMK, MSK and MAK.	SC70201/03 Regina v MSK SC70002/03 Regina v MAK SC70202/03 Regina v MRK SC70203/03 Regina v MMK
27/02/2004 01/03/2004 12/03/2004	Justice Sully concludes sentencing hearing and reserved his judgment in proceedings against MRK, MMK, MSK and MAK.	SC70201/03 Regina v MSK SC70002/03 Regina v MAK SC70202/03 Regina v MRK SC70203/03 Regina v MMK
22/04/2004	Justice Sully delivers judgment in proceedings against MRK, MMK, MSK and MAK.	SC70201/03 Regina v MSK SC70002/03 Regina v MAK SC70202/03 Regina v MRK SC70203/03 Regina v MMK

Date	Event	Proceeding Numbers
22/04/2004	MSK is convicted on 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900. MSK sentenced to: <ul style="list-style-type: none"> 22 years imprisonment commencing on 13 August 2002. Non-parole of 16.5 years, expiring on 12 February 2019. 	SC70201/03 Regina v MSK
22/04/2004	MAK is convicted on 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900. MAK sentenced to: <ul style="list-style-type: none"> 16 years imprisonment commencing on 1 August 2002. Non-parole period of 12 years, expiring on 31 July 2014. 	SC70002/03 Regina v MAK
22/04/2004	MRK is convicted on 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900. MRK is sentenced to: <ul style="list-style-type: none"> 10 years imprisonment commencing on 1 August 2002. Non-parole period of 5 years, expiring on 31 July 2007. 	SC70202/03 Regina v MRK
22/04/2004	MMK is convicted on 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900. MMK is sentenced to: <ul style="list-style-type: none"> 22 years imprisonment commencing on 1 August 2002. Non-parole period of 13 years, expiring on 31 July 2015 	SC70203/03 Regina v MMK
06/09/2004	In the New South Wales Court of Criminal Appeal, Justices Mason, Wood and Barr order that: <ol style="list-style-type: none"> The non-publication order referable to appellants' name be continued. MSK and MAK's appeal against conviction be dismissed. MSK and MAK's application for leave to appeal against sentence to be heard and determined at later date. 	CCA2004/1711 MSK v Regina CCA2004/1712 MAK v Regina

Date	Event	Proceeding Numbers
25/10/2004	<p>Second New South Wales Supreme Court proceedings against MSK and MAK are listed for hearing.</p> <p>Hearing is adjourned as a result of accused's submission that they may be prejudiced as a result of the extensive media publicity in relation to them.</p>	<p>SC2003/158 Regina v MAK</p> <p>SC2003/3 Regina v MSK</p>
07/01/2005	MSK and MAK make application to High Court of Australia for expedition of their application for special leave to appeal.	<p>HC – S368/04 MAK v Queen</p> <p>HC – S369/04 MSK v Queen</p>
04/02/2005	High Court of Australia refuse MAK and MSK's application for special leave to appeal.	<p>HC – S368/04 MAK v Queen</p> <p>HC – S369/04 MSK v Queen</p>
28/02/2005	<p>Second proceedings against MSK and MAK adjourned on 25.10.2004 are relisted for hearing.</p> <p>Hearing is again adjourned for purpose of allowing MAK and MSK to obtain legal representation. .</p>	<p>SC2003/158 Regina v MAK</p> <p>SC2003/3 Regina v MSK</p>
14/03/2005	<p>Second proceedings against MSK and MAK adjourned on 28.02.2005 are relisted.</p> <p>Accused make application to Justice Howie for the trial to be stayed.</p>	<p>SC2003/158 Regina v MAK</p> <p>SC2003/3 Regina v MSK</p>
15/03/2005	Justice Howie delivers his interlocutory judgment refusing to stay the hearing of further proceedings against MSK and MAK.	<p>SC2003/158 Regina v MAK</p> <p>SC2003/3 Regina v MSK</p>
18/03/2005	MSK and MAK make application to the New South Wales Court of Criminal Appeal for leave to appeal the interlocutory judgment of Justice Howie dated 15 March 2005.	<p>SC2003/158 Regina v MAK</p> <p>SC2003/3 Regina v MSK</p>
24/03/2005	Justices Barr, Bell and Hall of the New South Wales Court of Criminal Appeal refuse MSK and MAK's application for leave to appeal the interlocutory judgment of Justice Howie dated 15 March 2005.	<p>SC2003/158 Regina v MAK</p> <p>SC2003/3 Regina v MSK</p>

Date	Event	Proceeding Numbers
12/05/2005	<p>The hearing of second proceedings against MSK, MAK and MMK before Hidden J commences.</p> <p>MSK was charged with 5 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.</p> <p>MAK was charged with 1 count of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.</p> <p>MMK was charged with:</p> <ul style="list-style-type: none"> 1 count of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900; and 1 count of contravention of s66C(2) of the <i>Crimes Act (NSW)</i> 1900. 	<p>SC2003/158 Regina v MSK</p> <p>SC2003/3 Regina v MAK</p> <p>SC2003/149 Regina v MMK</p> <p>("the second proceedings")</p>
31/05/2005	<p>Justice Hidden orders a retrial of second proceedings against co-accused MAK and MMK as a result of the prejudicial behaviour of MSK.</p> <p>MSK is not allowed a retrial.</p>	<p>SC2003/158 Regina v MSK</p> <p>SC2003/3 Regina v MAK</p> <p>SC2003/149 Regina v MMK</p>
30/06/2005	MRK makes application to the New South Wales Court of Criminal Appeal for leave to appeal against his conviction.	CCA 2005/885 MRK v Regina
04/08/2005	Justices Spigelman, Grove and Hall of the New South Wales Court of Criminal Appeal refuse MRK's application for leave to appeal against his conviction.	CCA 2005/885 MRK v Regina
11/10/2005	MSK, MAK and MMK make application to the New South Wales Court of Criminal Appeal for leave to appeals against severity of the sentences imposed upon them by Justice Sully.	<p>CCA 2004/2573 MAK v Regina</p> <p>CCA 2004/2575 MSK v Regina</p> <p>CCA 2005/3 MMK v Regina</p>
28/10/2005	Justice Hidden commences sentencing hearing in second proceedings against MAK, MSK and MMK.	<p>SC2003/158 Regina v MSK</p> <p>SC2003/3 Regina v MAK</p> <p>SC2003/149 Regina v MMK</p>
04/11/2005	<p>Justices McClellan, Grove and Hall of the New South Wales Court of Criminal Appeal:</p> <ul style="list-style-type: none"> Refuse MAK's application for leave to appeal against his severity of sentence. Allow MSK and MRK's application to appeal against the severity of their sentences. Dismiss MSK and MRK's appeal against the severity of their sentences. 	<p>CCA 2004/2573 MAK v Regina</p> <p>CCA 2004/2575 MSK v Regina</p> <p>CCA 2005/3 MMK v Regina</p>
05/04/2006	Justice Hidden delivers his sentencing judgment in second proceedings against MSK, MAK and MMK.	<p>SC2003/158 Regina v MSK</p> <p>SC2003/3 Regina v MAK</p> <p>SC2003/149 Regina v MMK</p>

Date	Event	Proceeding Numbers
05/04/2006	<p>MSK was convicted on 4 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900 and plead guilty to a fifth count.</p> <p>MSK sentenced to:</p> <ul style="list-style-type: none"> • 28 years imprisonment commencing on 13 August 2002. • Non-parole period of 22 years making him eligible for release on 12 August 2024. 	SC2003/158 Regina v MSK
05/04/2006	<p>MAK plead guilty to 1 count of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.</p> <p>MAK sentenced to:</p> <ul style="list-style-type: none"> • 19 years imprisonment commencing on 1 August 2002. • Non-parole period of 14 years making him eligible for release on 31 July 2016. 	SC2003/3 Regina v MAK
05/04/2006	<p>MMK plead guilty to one count of contravention of s66C(1) of the <i>Crimes Act (NSW)</i> 1900.</p> <p>MMK acquitted of one count of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.</p> <p>MMK sentenced to:</p> <ul style="list-style-type: none"> • Twelve months imprisonment, to be served as a juvenile offender, commencing on 5 April 2006, which is to be served concurrently with his previous sentence delivered by Justice Sully. 	SC2003/149 Regina v MMK

Annexure B
Adults at time of offences

MSK

Proceeding	Charges	Outcome	Sentence
SC70201/03 Regina v MSK	9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	MSK is convicted on 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	22 years imprisonment commencing on 13 August 2002. Non-parole of 16.5 years, expiring on 12 February 2019.
SC2003/158 Regina v MSK	5 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	MSK was convicted on 4 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900 and plead guilty to a fifth count.	28 years imprisonment commencing on 13 August 2002. Non-parole period of 22 years making him eligible for release on 12 August 2024.

MAK

Proceeding	Charges	Outcome	Sentence
SC70002/03 Regina v MAK	9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	MAK is convicted on 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	16 years imprisonment commencing on 1 August 2002. Non-parole period of 12 years, expiring on 31 July 2014.
SC2003/3 Regina v MAK	1 count of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	MAK plead guilty to 1 count of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	19 years imprisonment commencing on 1 August 2002. Non-parole period of 14 years making him eligible for release on 31 July 2016.

Juveniles at time of offences

into and the following page forms the Annexure marked "B" referred to in the Affidavit of Sarah Nicole Easton sworn before me on 25 August 2006.

Elko

MMK

Proceeding	Charges	Outcome	Sentence
SC70203/03 Regina v MMK	9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	MMK is convicted on 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	22 years imprisonment commencing on 1 August 2002. Non-parole period of 13 years, expiring on 31 July 2015.
SC2003/149 Regina v MMK	1 count of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900; and 1 count of contravention of s66C(2) of the <i>Crimes Act (NSW)</i> 1900.	MMK acquitted of one count of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900. MMK plead guilty to one count of contravention of s66C(1) of the <i>Crimes Act (NSW)</i> 1900.	Twelve months imprisonment, to be served as a juvenile offender, commencing on 5 April 2006, which is to be served concurrently with his previous sentence delivered by Justice Sully.

MRK

Proceeding	Charges	Outcome	Sentence
SC70202/03 Regina v MRK	9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	MRK is convicted on 9 counts of contravention of s61JA of the <i>Crimes Act (NSW)</i> 1900.	10 years imprisonment commencing on 1 August 2002. Non-parole period of 5 years, expiring on 31 July 2007.