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MEMORANDUM

DATE: 30 August, 2012
TO: John Champion SC, Director of Public Prosecutions
FROM: David Bosso
RE: Mr Thomas
CC: Michele WILLIAMS SC

Mr Thomas is and has been a crown witness in a number of matters. He is a crucial witness in the ongoing prosecution of Faruk ORMAN for the murder of Paul KALIPOLITIS. This matter is awaiting trial in the Supreme Court. ORMAN is currently serving 20 years imprisonment with a minimum of 14 years for murder of Victor PIERCE. I have attached the sentencing remarks of Weinberg J.

I have attached a copy of the Prosecution opening which sets out the case against ORMAN

Essentially we are seeking your advice in relation to Mr Thomas and an undertaking he gave to give evidence during his plea hearing for the murders of Jason MORAN and Pasquale BARBARO in 2006.

Mr Thomas has now indicated to police that he is no longer willing to continue to provide assistance and indeed give evidence. The police have come to use for advise on whether or not we would seek to take Mr Thomas to the Court of Appeal and attempt to have him re-sentenced if he were to fail to give evidence at the trial of ORMAN (currently he has indicated that he will not give evidence).

This matter has a lengthy and involved background and it might assist if this is now detailed.

Mr Thomas provided 14 statements to police prior to plea (in relation to the MORAN and BARBARO murders). These were all exhibited during his plea. I have attached a redacted copy of the plea transcript and sentencing remarks of King J. My understanding is that the redactions deal only with personal issues and some safety issues. I don't believe they will cause problems in providing this advice. If you would like un-redacted copies I can make enquiries and try and locate them – they are not readily available due to obvious reasons.

I have also provided you with the statements that were tendered on the plea (in the blue folder).

Only one of the statements refers to the murder of KALIPOLITIS (tab 9). This statement is the first of three. But importantly is the only statement given at the time of the undertaking to give evidence.

A second statement is made on 2.5.08 and a third statement is made 1.2.11 – which relates to a telephone call. I have attached both statements. You will see that the second statement goes into far greater detail and really forms the basis of the evidence given by Mr Thomas to date.

Mr Thomas gave evidence in the committal of this matter, this was in line with his statements. I have not attached his committal transcript although it is contained in the blue folder.

Mr Thomas also gave evidence in the Victor PIERCE murder – again where one of the accused was ORMAN. ORMAN was convicted and is currently serving a sentence for this murder.

Mr Thomas is also a witness although not a crucial witness in the CDPP prosecution of Paul DALE which is currently before the Supreme Court. He has indicated that he will not give evidence in that matter. As mentioned his evidence is not crucial to that matter. This does present us with an opportunity to see if Mr Thomas is serious about his statement that he will not give evidence, as the DALE prosecution was clearly covered by his original undertaking and there would be consequences for him should he carry through and not give evidence.

However, his evidence in relation to the KALIPOLITIS murder is crucial, without him the prosecution cannot proceed.

You will see from the sentencing remarks that Mr Thomas was sentenced to 23 years imprisonment with a non parole period of 12 years. There was approximately 2 years PSD declared. He will become eligible for parole in PII

We are advised by the police that Mr Thomas is now concerned about what might happen to him after his release and also what might happen to PII. The fate of Carl WILLIAMS is his primary concern (which is of course most understandable). The problem we have is that our case seems to be continually pushed back and is now not likely to get on before February 2013. This makes Mr Thomas more nervous and more reluctant.

The questions ultimately that we seek your advice on are as follows:

1. What is the extent of the undertaking made by Mr Thomas on 7.6.2006?
2. Has Mr Thomas fulfilled the undertaking already given the evidence he has given in other proceedings?
3. Does the Mr Thomas undertaking cover the prosecution in relation to the murder of KALIPOLITIS, given the limited scope of his first statement in relation to that murder?
4. Does the Mr Thomas undertaking extend or apply to the further statements he provided after giving the undertaking on 7.6.2006?
5. If Mr Thomas fails to give evidence in the KALIPOLITIS murder, would the Director consider that Mr Thomas had failed to comply with his undertaking and in turn would the Director seek to have Mr Thomas re-sentenced by the Court of Appeal?

The police are seeking a way of dealing with Mr Thomas reluctance and would like to be able to go to Mr Thomas and say "we have advice from the DPP that should you fail to give evidence or comply with your undertaking, then the DPP will seek to have you re-sentenced."

That is the primary reason for seeking this advice, to assist the police in their handling of Mr Thomas

The police had also made an informal inquiry about whether or not it would be possible to re-sentence ^{Mr Thomas} (reducing his sentence) on the basis that he had already gone well beyond his original undertaking. This of course creates potential problems with his credibility – although it is clear that he has already received a discount and that he would be giving evidence for a discount. This would not be a secret.

A resentencing to reduce his sentence (if possible) would seem to create more problems than simply saying to ^{Mr Thomas} that if you do not comply with original undertaking (if it applies) as the consequences of such a failure were made clear at the time the undertaking was given.

Michele WILLIAMS SC is briefed to prosecute the matter and we would seek to have a conference with you in due course to discuss this matter.

Please let me know if you require any additional material or further information.

We await your advice.

David Bosso
Senior Solicitor
Complex Crime