SET 6

JBD POGS

IN THE COURT OF APPEAL OF NEW ZEALAND CA 393/92

PUBLICATION OF NAME(S) IDENTIFYING PARTICULARS OF COMPLAINANT(S) PROHIBITED BY S139, CRIMINAL JUSTICE ACT 1985.

ORDER PROHIBITING PUBLICATION OF NAME ADDRESS OR PARTICULARS IDENTIFYING APPELLANT/ RESPONDENT

~~THE QUEEN~~ R

28 APR 1993

93/379

✓ Accused

v

CRIME APPEAL (CA 393/92)

Coram: Hardie Boys J.
Holland J.
Thorp J.

Hearing: 22 February 1993

Counsel: G S Collin for appellant
R L B Spear for Crown

Judgment: 22 February 1993

JUDGMENT OF THE COURT DELIVERED BY HOLLAND, J.

The appellant was charged with two counts of permitting an indecent act and one of an indecent assault, both involving a four year old girl. He was acquitted of the charges on the grounds of insanity and in accordance with s.115(1) of the Criminal Justice Act 1985 was sentenced to be detained in a hospital as a special patient under the Mental Health Act 1969. He appeals against that order for detention.

No point was taken by the Crown but we have considerable doubt as to whether the appellant has a right of appeal in respect of the consequential order

made following an acquittal on the grounds of insanity. Section 114 of the Criminal Justice Act 1985 gives a right of appeal against a verdict or a decision of acquittal on account of insanity but it is difficult to see that such a right of appeal extends to the order under s.115 consequent upon such a verdict or decision.

As the point has not been argued before us and as we are able to dispose of the appeal without deciding the issue we do no more than express our doubt.

Section 115(1)(a) of the Criminal Justice Act provides that on acquittal on account of insanity "the Court shall make an order that the person be detained in a hospital as a special patient under the Mental Health Act 1969". Subsection (2) empowers the Court to make alternative orders if "having regard to all the circumstances of the case, and being satisfied, after hearing medical evidence, that it would be safe in the interests of the public" so to do.

In this case the Judge heard medical evidence at the trial directed to the issue of insanity of the accused relating to verdict. He also had before him a report from a psychiatrist directed to the fitness of the appellant to plead. This report was dated 12 August 1992. The trial took place on 23 October 1992.

We are satisfied that neither the evidence given at trial nor the pre-trial medical report contained evidence of the circumstances of the case or directed to the question whether the committal to a mental hospital as an ordinary patient was unsafe in the interests of the public.

The medical report included a recommendation that the appellant be returned to the Forensic Psychiatric Service of Sunnyside Hospital under s.115(2)(a) of the Act but that step could not be taken at the time the report was given. The appellant was not under a disability within the meaning of s.115 and was still awaiting trial.

It may be that the psychiatrist intended this recommendation to be put into force after trial and acquittal on the grounds of insanity but the report is no more than a bare recommendation unaccompanied by any reasons directed specifically to the circumstances of the case or safety in the interests of the public in committing

the appellant as an ordinary patient as against a special patient under the Mental Health Act.

The same psychiatrist gave evidence at the trial but that evidence does not in any way refer to the safety in the interests of the public. No submissions were made following verdict seeking further medical examination or report. In these circumstances the Judge had no alternative but to apply s.115(1) of the Act as he did.

Counsel for the Crown has drawn our attention to the fact that some nine days after the order for detention was made the Mental Health (Compulsory Assessment and Treatment) Act 1992 came into force. This Act makes some changes to the position of special patients and what were committed patients but its content does not affect the decision in this appeal. We are satisfied that under the old legislation as well as the new there are adequate provisions to enable the appellant to have his status changed from that of special patient if and when the situation should require it.

The appeal is dismissed.

A D Holland J.

Solicitors:
Linwood Law Centre, Christchurch, for appellant
Crown Law Office, Wellington