

IN THE DISTRICT COURT
HELD AT HAMILTON

CRN No. 4072004486

BETWEEN

THE WAIKATO REGIONAL
COUNCIL

Informant

AND

RICHARD MONTAGUE
GILBERT

Defendant

Sentencing: 12 July 1995

Counsel: Ms K J L Cameron for informant
Mr R D Clark for defendant

SENTENCING NOTES OF JUDGE R J BOLLARD

The circumstances surrounding this case are most unusual. The defendant, Mr R M Gilbert, is charged under sections 338(1)(a) and s.9(3) of the Resource Management Act 1991 with an offence of clearing trees, shrubs and plants over an area of 16.69 hectares on his farm at No. 1 Road, Pirongia West, in between in the period 1 January 1994 to 28 February 1994. Mr Gilbert had made an application to the informant, the Waikato Regional Council, for consent to undertake this clearance work, but he came under the impression, after having submitted his application, that such consent was not required after all and in consequence withdrew the application. This change of approach on his part was in hindsight due to what I conceive to be an out of character blunder of thinking at the time. There seems to have been some public doubt created as to persons' rights in being able to clear land containing indigenous vegetation, that doubt having been fomented on

account of the example of a person in the South Island who was involved in a dispute with the authorities over clearance or intended clearance of his land.

The defendant is a person with an exemplary background as was demonstrated by a large volume of references which were submitted to me when this matter was first called last year.

Part of the application that Mr Gilbert originally submitted for consent to clear the land involved his offering to vest 20 hectares of quality bush in the Department of Conservation as administrator of a major reserve on the upper slopes of Mt Pirongia. I agreed to adjourn the proceedings after hearing submissions from both the informant's counsel and from defence counsel, on the footing that Mr Gilbert, through his counsel, had indicated that his offer to vest a large portion of what was described as "pristine native bush" in the Department of Conservation by way of augmentation of the Department's reserve, was still open. The matter has thus stood adjourned for a number of months for that proposal to be pursued.

Today I have had placed before me a formal deed entered into between Mr Gilbert and the Minister of Conservation in which Mr Gilbert has agreed to gift 30 hectares of his land free of cost to the Department. Mr Gilbert has fenced off the land at his own expense at a cost exceeding \$6000. He has also accepted responsibility for future maintenance of the fencing. He has further agreed to meet the survey costs to enable the transfer to the Crown to occur. I consider this to be a substantial gesture on the defendant's part and one which will be of real benefit to the region and the people that reside there.

The Regional Council, in bringing the proceedings, have incurred costs totalling \$6,660. There have been further legal costs as well, but that figure is accepted for present purposes as representing the costs incidental to the case. Mr Gilbert has agreed, through his counsel, to meet those costs as a condition of a discharge without conviction under s.19 of the Criminal Justice Act.

I consider the circumstances of this case to be quite out of the ordinary, as I have said earlier. This is recognised by the informant, in that I am advised through counsel that, subject to the costs being met by the defendant, the informant does not oppose the adoption of the course mentioned.

All things considered, and taking into account the various aspects I have mentioned, I propose to adopt the course which Mr Clark for the defendant has urged upon me. I have not traversed all the matters raised on the defendant's behalf in his submissions, but I do take them into account.

Accordingly the defendant will be discharged without conviction, subject, however, to his meeting the prosecution costs amounting to \$6,660. Those costs are to be met at the rate of \$1000 per month, the first payment to be made within the next month and the following payments to be made at calender monthly intervals thereafter until final clearance.

As an addendum, I have no doubt that the defendant will not be before the Court again on a similar matter of this kind. It is a one-off incident which, although it happened, will nevertheless be something he will be able to put behind him and carry on with his life with his good reputation in the Pirongia district intact.



R J Bollard
Planning Judge