

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

M.55/83

IN THE MATTER of an application
by DONALD JAMES EADE
for a Writ of Habeas
Corpus ad subjiciendum

Hearing: 26 April 1983

Counsel: D.J. More for Donald James Eade
W.J. Wright for Crown

Reasons for
Judgment:

16 MAY 1983

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14 JUN 1983
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REASONS FOR JUDGMENT OF ROPER J.

On the 26th April 1983 at Dunedin I ordered that a writ of habeas corpus issue directed to the Superintendent of the Dunedin Prison and that the Applicant, Mr Eade, be discharged from prison forthwith. At that time I intimated that because the matter was of some importance I would give my reasons in writing, and this I now do.

On the 30th August 1982 Mr Eade pleaded guilty to a charge of driving with excess blood alcohol and was fined \$250 with costs \$20 and medical expenses \$30, and disqualified from driving for twelve months. He was represented by Counsel on legal aid.

The fine was not paid and the Registrar issued a summons to Mr Eade on the 19th October 1982 in the prescribed form pursuant to s.89 of the Summary Proceedings Act 1957. That section so far as is relevant provides:-

" (1) Where default is made in the payment of any sum adjudged to be paid by a conviction the Registrar shall inquire into the means of the defendant and shall, unless he knows that the defendant is undergoing a sentence of detention, -

(a) Issue a summons in the prescribed form requiring the defendant, unless he sooner pays the amount outstanding under the conviction, to appear at the time and place appointed in the summons;

to enable the defendant to be orally examined as to his means.

...

(9) An examination under this section shall be made orally on oath before the Registrar and shall be committed to writing.

(10) When the examination of any person under this section has been concluded the written record of the examination shall be read over to that person and signed by the Registrar.

(11) Notwithstanding the provisions of subsections (9) and (10) of this section, the Registrar may accept in lieu of an oral examination a statement in writing verified by statutory declaration."

The summons called upon Mr Eade to attend the District Court at Dunedin at 10 a.m. on the 18th January 1983, and the statement of service on the back of the Court copy of the summons records that it was served on Mr Eade's sister. There is no record on the Court file of Mr Eade's attendance at the Court on the 18th January (nor of any step taken to enforce attendance), but on the 27th January the Court received a statement of income and assets from Mr Eade in which he gave his address as Cherry Farm Hospital, his income as \$82 p.w. sickness benefit, and his assets nil. He offered to pay \$20 p.w. and there is a note at the foot giving his bank account number and enquiring whether the Court could obtain the payments by direct credit. The document purports to be a statutory declaration but the status of the person by whom it was taken, a Mr Crawshaw, is a mystery because has not crossed out the inappropriate titles among "Justice of the Peace, Solicitor, Notary Public or (Deputy) Registrar or Person Authorised" below his name.

On the 27th January the Registrar wrote to Mr Eade accepting his offer of \$20 p.w. and asking him to make his own arrangements concerning payment of the instalment as the Court had no authority to recover them by direct credit.

No further steps were taken to bring Mr Eade before the Court for examination pursuant to s.89, the position being that the Registrar accepted Mr Eade's declaration in lieu, as he was entitled to do under s.89(11).

No part of the fine was paid and on the 18th March the Registrar presented a report to a District Court Judge pursuant to s.100 of the Act. Subsections (1) and (2) of s.100 provide:-

" (1) Where default is made in the payment of a sum of money adjudged to be paid by a conviction the Registrar may at any time and from time to time and shall if the sum remains unpaid for more than 12 months from the date of the conviction or order, report thereon to a District Court Judge.

(2) Every report shall contain details of the measures taken to enforce payment of the sum and the results of those measures and shall have attached thereto a copy of the transcript of the inquiry, if any, into the defendant's means."

This is the report presented:-

" REGISTRAR'S REPORT TO A JUDGE WHERE
DEFAULT IN PAYMENT
(Section 92 & 100, Summary Proceedings Act 1957)

Donald James EADE previously of C/- Villa 9,
Cherry Farm Hospital was on the 30th day of August
1982 convicted of driving with excess blood/
alcohol in the District Court at Dunedin and
ordered to pay the sum of \$250.00 and the sum
of \$20.00 cost (*and Medical Expenses \$30.00

Defendant granted time to pay \$20 per week,
payment 4.2.83. Nothing has been paid and
now 6 payments in arrears. Defendant was at
the time the time payment application granted
an informal patient in Cherry Farm and he offered
to pay \$20.00 per week. I have checked with
Cherry Farm and defendant left there on 4
February.

And the Defendant has made default in the payment
of (part of) the sum(s) adjudged to be paid; and
the following measure(s) was (were) taken to
enforce payment

And I am satisfied (after enquiry into the
defendant's means under section 89 of the Act)
(on an application under section 88 of the Act)

(i) ~~THAT the defendant has no present means to pay the sum adjudged to be paid either in whole or in part; and~~

(ii) ~~THAT execution against the goods and chattels of the defendant would be more injurious to him or his family than imprisonment; and~~

(iii) ~~THAT having regard to the means of the defendant, the amount adjudged to be paid could not reasonably be paid within a period of 12 months.~~

* I have attached a copy of the transcript of the enquiry into the defendant's means.

* Further comments by Registrar:
The defendant has not been in contact with the office, and his present circumstances are not known. Outstanding \$330.00

Fine remaining unpaid	\$250.00
Costs	20.00
Other (Specify)	
Medical Expenses	30.00
Summons Fee	30.00
	<hr/>
TOTAL OUTSTANDING	\$330.00

(Deputy) Registrar
18.3.83"

Subsection (3) of s.100 provides:-

" (3) Subject to the provisions of section 101 of this Act, the District Court Judge after considering the report of the Registrar and having regard to the offence, character, and personal history of the defendant and all the factors of the case, including any change in the defendant's circumstances since his conviction, may -

(a) Refer the papers back to the Registrar with a direction that one or more of the measures prescribed in section 92 or section 93 of this Act and specified in the direction be invoked and the Registrar shall give effect to such directions:

Provided that where further time for payment has been given or an order attaching any salary or wages has been made such time for payment or period of such order together with any extension of time or period of attachment order

given or made earlier shall not exceed 12 months except in special circumstances:

- (b) Direct the issue of a warrant of commitment in the prescribed form:
- (c) Sentence the defendant to corrective training ... or to periodic detention or to community service:
- (d) Direct the issue of enforcement proceedings under paragraph (a) or paragraph (b) of this subsection for a sum less than the sum due in respect of the conviction:
- (e) Direct that the question of further enforcement proceedings be postponed for such time and upon or subject to such conditions as he thinks fit:
- (f) Remit the sum adjudged to be paid or part thereof."

Subsection (4) provides that before a sentence of corrective training, periodic detention or community service is imposed pursuant to subs. (3)(c) the Defendant must be brought before the Court, either by summons or warrant to arrest, when the appropriate sentence can be imposed or the sum due remitted in whole or in part. Subsection (10) grants a right of appeal to the High Court where the sentence is one of corrective training, periodic detention or community service.

There is no statutory requirement to bring a Defendant before the Court before issuing a warrant of commitment pursuant to subs. (3)(b), and there is no right of appeal against the sentence of imprisonment imposed indicating that imprisonment for non-payment of a fine is very much a last resort. The only restrictions on issuing a warrant of commitment are found in s.101 which provides:-

" 101. Restriction on imprisonment -

(1) Subject to section 85 of this Act, a District Court Judge shall not direct the issue of a warrant of commitment under section 100 of this Act or sentence the defendant to any form of detention under this Part of this Act for non-payment of a sum adjudged to be paid by a conviction unless on an occasion subsequent to his

conviction an inquiry into the defendant's means has been made and the District Court Judge is satisfied that the defendant has or has had sufficient means to pay the sum and that all other methods of enforcing payment of that sum have been considered or tried and it appears to the District Court Judge that they are inappropriate or unsuccessful:

Provided that this section shall not apply in the case of a defendant who is undergoing a sentence of detention in a penal institution."

(Section 85 has no relevance to the present case.)

The order for the issue of the Warrant of Commitment was made on a printed form which has this heading:-

"Having considered this report (and the attached copy of the transcript of the enquiry) and having regard to the offence, character and personal history of the defendant and all the factors of the case, including any change in the defendant's circumstances since his conviction, I hereby direct that -

..."

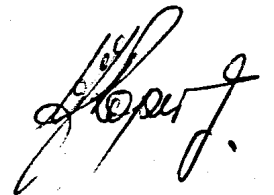
It then provides for ten options such as allowing time to pay, seizure of vehicles, remission of the amount due and the like. In this case an order was made on the 22nd March that a warrant of commitment be issued requiring Mr Eade to be imprisoned for 60 days (option 7). He spent eleven days in prison.

(As an aside, it was accepted by Mr Wright that had Mr Eade been sentenced to imprisonment in the first instance he would have been unfortunate indeed to have received a term of imprisonment in excess of 10 days and I was rather short with him when he submitted that this not being an appeal from, or review of, the learned Judge's decision the fact that 60 days' imprisonment was excessive was an irrelevant consideration. Mr Wright was quite correct and is to be commended for standing his ground. I regret my abruptness. The sentence of 60 days, excessive

as it was in the circumstances, was within jurisdiction and its imposition did not make Mr Eade's detention unlawful.)

My reason for ordering the issue of the writ as I indicated on the day was that on the report available to the learned Judge there was no way he could have been satisfied as required by s.101 "that the Defendant has or has had sufficient means to pay the sum and that all other methods of enforcing payment ... have been considered or tried and it appears that they are inappropriate or unsuccessful."

As at the 27th January Mr Eade was, according to his declaration, able to pay \$20 p.w. There was no evidence that he was in a position to pay anything before that date, and at the time of the Registrar's report nothing was known of his financial position. Furthermore, as the Registrar's report makes clear all other methods of enforcing payment had not been tried and indeed no other measure had been taken to enforce payment; and there was no evidence that all other alternatives had been considered and rejected as inappropriate. The requirements of s.101 not having been complied with Mr Eade's imprisonment was unlawful.



Solicitors:

Quelch, McKewen, Tohill & More, Dunedin, for Mr Eade
Crown Solicitor, Dunedin, for Crown

