

File

T. 190A/76

BETWEEN

FREDERICK ROBERT ROSE of
Auckland, Unemployed ✓

APPLICANT

A N D

POLICE DEPARTMENT

RESPONDENT

UNIVERSITY OF AUCKLAND
28 JUN 1984
LAW LIB A

Hearing : 23rd March 1984
Counsel : M.W. Vickerman for Applicant
P. Kaye for Police
Judgment : 23rd March 1984

ORAL JUDGMENT OF CHILWELL J.

On 17th February 1977 the applicant stood trial before me as the presiding Judge and a common jury in respect of a charge of burglary alleged to have been committed on the 17th September 1976. The jury found him guilty. He was remanded for sentence. He duly appeared for and was sentenced on the 15th March 1977. My sentencing remarks indicate that I applied what I think were then relatively new provisions of the Criminal Justice Act relating to the confiscation of motor vehicles used in the commission of the crime in question. It seemed to me that this was a proper case for the application of that provision. The Probation Officer's report showed that the applicant had a Rambler Rebel motor car self-valued at \$2,000. It was subject to

a hire purchase agreement. The amount owing on that agreement was \$445. The letter containing that advice from the finance company concerned was dated 16th March 1977. I infer that counsel must have informed me at sentencing of the balance owing.

Having regard to the applicant's very serious criminal history I decided, for the reasons given in my sentencing remarks, to profer the chance for reformation. Accordingly I fined him \$1,000 anticipating that upon confiscation of the motor car and after the accounting process had been completed and payment of the fine there would have been a surplus for the applicant. Immediately after sentence I must have been advised by counsel that an appeal was to be immediately filed because on the 15th March 1977 I suspended the sentence under Section 399 of the Crimes Act.

Some time thereafter the applicant saw fit to go to Australia where he was subsequently involved in some criminal activity resulting in his being imprisoned there for a period of about 3 years. At a later stage he was extradited to New Zealand in respect of some other criminal matter and was sentenced to a substantial term of imprisonment in New Zealand. The present file indicates that there was an appeal against that particular matter but that that appeal was unsuccessful. With regard to the appeal in the Court of Appeal in the present case it was not proceeded with by the applicant. In the end it was dealt with by the Court of Appeal by refusing leave to appeal against conviction. That was on the 18th November 1977. It was brought to my

attention on the 11th April 1978 when I made an order that the sentence should be executed forthwith.

There is a file of correspondence from that point onwards which indicates the applications made by the applicant from time to time and my final order under Section 19D of the Crimes Act 1961. That order reads :

"Warrant to issue. 6 months imprisonment.

M.F. Chilwell J.

26/10/83"

I am advised that the applicant was not aware of the issue of the warrant until some time in November 1983 whereupon he made unsuccessful representations to the Court staff and then instructed his present counsel.

There is a motion before me today for orders granting a rehearing of the sentence imposed on 15th March 1977 or, alternatively, that the warrant of committal issued on 26th October 1983 be suspended for a period of 12 months. The motion is supported by an affidavit by the applicant. In his submissions today Mr. Vickerman has suggested that the fine ought to be entirely remitted due to the change of circumstances purportedly disclosed in the affidavit and on the Court file. There has been some debate between counsel as to whether the applicant did or did not report to the Probation service on the occasion of his release from a further short term of imprisonment. On that occasion he was released in September 1983.

The primary issue is whether this Court has jurisdiction to deal with the application. Mr. Vickerman relies upon Section 19F of the Crimes Act and in particular on the words "or in any case" appearing therein. Moreover, because that section refers to Sections 19C and 19D it is his contention that the practical effect is that the Court can go so far as to remit the original fine. The issue of jurisdiction is opposed by the Crown. By way of analogy I have been referred to Section 75 of the Summary Proceedings Act 1957 which invests the District Court with wide powers of rehearing. The submission is that this Court must have similar wide powers within the scope of its inherent jurisdiction. As I understand the principles with regard to inherent jurisdiction they apply only in so far as they do not conflict with express enactments. If I have any jurisdiction under Section 19F of the Crimes Act 1961 it is limited to suspension of orders although one could possibly invent terms of suspension which could have the practical effect of remission.

It is my judgment that the words "or in any case" ^{was said by the court in this case that it should not be drawn} ~~must~~ draw their interpretation from the section as a whole and in particular the opening words which deal with the case of an appeal or application for leave to appeal. The type of suspension involved is ^{not} ~~is~~ ^{only} ~~in my judgment~~, that which is ^{and} required to protect the position of the offender while some other procedure such as an appeal ^{is} ~~is~~ under way. The word "suspend" does not, in my judgment, contemplate a rehearing ^{in a case where the offender has to pay or discharge the original fine} ~~and~~ ^{and} ~~is~~ ^{not} ~~contemplated~~ ^{in a case where the offender has to pay or discharge the original fine} ~~and~~ ^{and} ~~is~~ ^{not} ~~contemplated~~ ^{in a case where the offender has to pay or discharge the original fine}

nor do I think that any inherent jurisdiction of the Court
 can be invoked in face of the specific provisions of ⁵⁵ ~~sections~~
 19, ^{to} ~~19A, 19B, 19C, 19D, 19E and 19F~~ which are specific
 provisions relating to the payment and collection of fines.
~~On appeal~~

For the foregoing reasons I have come to the
 conclusion that ^{the} ~~this~~ Court ^{was} ~~is~~ functus officio, ^{but execution of the warrant of committal} ~~and has~~ ^{no} ~~no~~ ^{stayed} ~~no~~ ^{pending} ~~no~~ ^{appeal}
 jurisdiction to grant the relief sought. I have refrained
 from dealing fully with the factual matters and with the
 merits because I anticipate that there will be an appeal to the
 Court of Appeal. I record that the Crown indicated that it
 would like an opportunity to advise the Court of disputed
 areas of fact. In the event that there is an application
 made to the Court of Appeal by way of appeal or by way of
 application for leave to appeal I indicate that I would be
 prepared to stay execution without the necessity for counsel
 to appear.

M. J. [Signature]

to counsel
CIA J+

SOLICITORS :

- Applicant : Keegan Alexander Tedcastle & Friedlander, Auckland.
- Respondent : Crown Solicitor, Auckland.