

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

492
No. M. ~~479~~/84

BETWEEN

DORNAN

Appellant

A N D CHRISTCHURCH POLICE

Respondent

Hearing: 25 September 1984

Counsel: A.N.D. Garrett for Appellant
B.M. Stanaway for Respondent

Judgment: 25 September 1984

ORAL JUDGMENT OF HOLLAND, J.

This appellant was arrested and charged under the Summary Offences Act 1981, section 9, with assaulting a female. When he appeared before the District Court there was apparently presented to the Court a medical report obtained from a police doctor at the time of his arrest indicating that the appellant suffered from alcoholism and that "his repeated drunkenness and other noted but unchanged occurrences (using foul language in the street and his odd mannerisms) make the question of psychiatric illness likely".

He was remanded by the District Court Judge under the provisions of section 47A(2)(c) of the Criminal Justice Act for detention in Sunnyside Mental Hospital for observation. The information does not seem to disclose the period of that remand but he was further remanded on a second occasion to 9 August. On that day he was yet again remanded to Sunnyside Hospital pursuant to section 39B of the Criminal Justice Act to appear on 13 August 1984.

On 25 July a consultant psychiatrist at Sunnyside Hospital, Dr Ding, supplied a full report to the Court indicating that the appellant had a history of chronic alcoholism and was of dull intellectual capacity. It further indicated "that it is most probable that he is suffering from a Manic Illness". The report concluded that he was fit to plead but stated in the psychiatrist's opinion that he should receive continuing psychiatric treatment and that it was most unlikely that he would voluntarily comply. It is no doubt as a result of the receipt of that certificate that the District Court Judge deemed it necessary to have a further remand and a further certificate was received from Dr Ding in which he said that there was no doubt that the appellant:

"is still mentally ill and still suffering from the effects of his Manic Illness. ... In my opinion he is definitely still in need of continuing psychiatric treatment, the mainstay of which is the medication aided by emotional support and other rehabilitative measures. At this stage it is also my opinion that treatment must be on an inpatient basis".

It seems that the District Court Judge was of the view that this might be a case for the application of the provisions of section 39J of the Criminal Justice Act 1954 which provide as follows:

"When a person is convicted of any offence the Court, on being satisfied by the production of a certificate by 2 medical practitioners that he is mentally disordered, and that his mental condition requires that he should be detained in a hospital either in his own interest or for the safety of the public, may instead of passing sentence on him make an order that he be detained in a hospital as a committed patient:

Provided that no order shall be made under this section in respect of a person who is subject to a sentence of imprisonment or detention that has not expired."

On 13 August when this man appeared for sentence I am told that the matter was stood down and a request was made for an examination by two registered medical practitioners. That unfortunately was organised by the police at the police station during the luncheon adjournment. They obtained two police surgeons to examine the appellant. The certificates supplied by each of those medical practitioners were in the following terms:

"I spoke to the above for 10 mins at Christchurch central police station @ 1345 hrs.

He gave a good clear account of himself and his past. He freely admitted & discussed his troubles including his alcoholism. He showed quite good insight & no evidence of thought disorder or confusion. He spoke about his anger but this seemed to be appropriate to the circumstances.

I do not think this man needs committal under the Mental Health Act.

However I recommend that some form of regular surveillance be maintained to ensure he is followed up by a suitable medical specialist."

The other one said:

"Examined at Christchurch Police Station at 1330 hrs on 13 August 1984.

Clearly spoken, logical exposition of himself and his past history.

Admits to previous problems including alcohol excess and assault.

No evidence of thought disorder. No hallucinations or delusions.

Conclusion. Not committable under the Mental Health Act.

In reviewing his past history there would be some benefit if he could have some ongoing surveillance imposed for a period."

The underlining in each case is mine.

It is apparent from the District Court Judge's remarks on sentence that he considered himself bound to accept the conclusions in those medical reports and he said:

"The fact remains that I have no powers to exercise under Section 39J of the Criminal Justice Act whereby the defendant would become a committed patient so I must treat him as being under no disability and the normal sentencing principles apply with regard to the gravity of offending."

I am gravely disturbed that from reading the certificates of the two medical practitioners concerned their attention would not seem to have been drawn to the precise provisions of the Criminal Justice Act. The issue was not whether the appellant qualified for committal under the provisions of the Mental Health Act. The issue was whether, he being a person convicted of an offence, was one where the doctors could or should certify that he is mentally disordered and that his mental condition requires that he should be detained in a hospital either in his own interest or for the safety of the public. The two certificates of Dr Ding make it clear that in Dr Ding's opinion he is mentally disordered and his mental condition requires that he should be detained in a hospital in his own interest. It is not clear whether that evidence was made available to the doctors. It is surprising that it was not referred to if it was. It is perhaps unfortunate that in circumstances such as this with pressures of time the organisation of the medical examinations had to be conducted by the police in whose custody of course the appellant was. It would have been much better for the examinations to have been arranged at the request of, and under the supervision of, the Justice Department.

I am not satisfied that this man was examined by doctors for the purpose for which he should have been examined and with respect to the District Court Judge I do not consider that he was bound to accept those certificates in the form in which they were as covering the position under section 39J of the Act which clearly was in his mind. As an instance of the mental condition of the appellant I set out verbatim the grounds of appeal which he wrote in his notice of appeal. They read as follows:

"I did not intend to strike the complaint there the assault could be called a tenchical assault as I dont even rember coming into contact with her

My mental condition is very quickly deterioronting as Ive need a ample dose of mediction to keep me on an even kell Ive been placed in mental hospitals all my life of and on and have had ect their to help my brain (Sock Treatment) I spent five years in Tokanuni hospital suffering from cronic alcholoismism and acute depression, and have spent many other years either in or just going into a hospital for help."

I was further concerned by counsel appointed to represent him on his appeal telling me that he had difficulty in obtaining rational instructions as to what occurred either by way of the offence or the sentencing. This man has been sent to prison for three months. It was done on the basis that the District Court Judge felt bound to treat him as being under no disability and that the normal sentencing principles should apply. If by use of the words "no disability" he meant no legal disability then it may be that that was the legal situation. But he was undoubtedly, in my view, required to treat this man as a person mentally disordered.

For myself I should have required further examinations, and it may well have been necessary for the Court to have satisfied itself that the doctors knew precisely the purpose of their examinations.

The sentence was imposed over a month ago. I have been minded to quash the sentence and to arrange for further examinations. Although it would seem that this man probably ought to be in hospital and I have no doubt that he should not be in prison, I am concerned that there may be an injustice if further delays are incurred to attempt to repair the processes which have taken place. I am satisfied that the District Court Judge, who at all stages up until imposing sentence was very mindful of the condition of this appellant, erred when he decided that because of the certificates of the two doctors he must sentence him on normal sentencing principles with regard to the gravity of offending. That action as a legal proposition is probably correct but the gravity of offending of this man who is clearly mentally disturbed is quite different from one who does not come within that category.

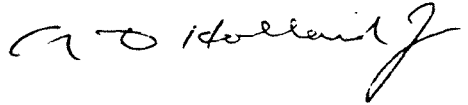
There is no doubt this man needs help. He needs help urgently. It is to be hoped that the appellant will be able sufficiently to understand his situation to seek admission as an inpatient to Sunnyside Hospital. I cannot, however, impose that as a condition nor can he be committed without the medical evidence...

I propose to quash the sentence of three months' imprisonment and to substitute a sentence whereby he is released on probation for a period of two years. A special condition of probation is that he is to comply with the requirements of his probation officer as to medical and psychiatric treatment and to take such steps in that regard in relation to the obtaining of

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expert advice and counselling as he may be advised by his probation officer. I repeat that it is not a term of probation that he admit himself to a mental hospital but I strongly urge him in his own interests to seek admission in a hospital and to seek the counselling, guidance and medication that Dr Ding has indicated will be available to him there.

I propose to take the unusual step of directing my Associate to forward a copy of this judgment to Dr Ding. I direct that this judgment which is delivered at 4.35 p.m. should not take effect until noon tomorrow. I trust that counsel will be able to arrange with the probation authorities for a probation officer to be aware that this man is to be released and see that some assistance is made for him.

A handwritten signature in cursive script, appearing to read "A O Hollander".