

BETWEENPETER FULCHER of  
Auckland Company  
Director

1272

PlaintiffANDBRIAN HOLMES BLACKWOOD  
of Auckland, District  
Court Judge, PETER  
MALCOLM HILT and  
WARRTN BRENT NEW both  
of Auckland, Police  
Constables

Defendants

Hearing: 15 November, 1985Counsel: G.A. Howley for Plaintiff  
J.R.F. Fardell for DefendantsJudgment: 3<sup>rd</sup> December 1985

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JUDGMENT OF PRICHARD, J.

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I have before me an application under the Judicature Amendment Act 1972 for an order reviewing the decision of a District Court Judge to continue with the hearing of five informations charging the Plaintiff with offences in connection with the importation and possession of the Class A controlled drug heroin. The Plaintiff seeks an order prohibiting the District Court

Judge or any judicial officer from continuing with the hearing of the informations.

There is also before me a motion by the Defendants to strike out the Plaintiff's proceedings on the ground that the decisions to which the application refers are not reviewable under the Judicature Amendment Act 1972.

The charges laid are as follows:

1. Having a Class A drug namely heroin in his possession for the purpose specified in paragraph (c) of subsection 1 of s.6 of the Misuse of Drugs Act 1975 on the 6th day of June 1978.
2. Conspiring with Terrence John Clark and others to import a Class A drug namely heroin contrary to s.6(1)(c) of the Misuse of Drugs Act 1975, between the 6th day of June 1978 and the 25th day of December 1978.
3. Importing into New Zealand together with Terrence John Clark and others a Class A controlled drug namely heroin on or about the 6th day of June 1978.
4. Conspiring with Terrence John Clark, John David Donnelly and others to supply a Class A controlled drug namely heroin contrary to s.6(1)(c) of the

Misuse of Drugs Act 1975 between the 10th day of November 1978 and the 21st day of December 1978, and

5. Conspiring with Terrence John Clark and John David Donnelly and others to supply a Class A controlled drug namely heroin between the 10th day of November 1978 and the 21st day of December 1978.

Informations 1, 2 and 3 were laid on 17 April, 1985:  
informations 4 and 5 on 5 September, 1985.

It is the essence of the Plaintiff's case that the charges laid under the Misuse of Drugs Act 1978 are statute barred and that the informants have no right to proceed with conspiracy charges laid under the Crimes Act 1961 as alternatives to charging the identical offences under the Misuse of Drugs Act 1975.

Referring to the motion to strike out the Plaintiff's application, Mr Fardell concedes that even if the decision of the District Court Judge is not amenable to review proceedings, this Court must be able in the exercise of its inherent supervisory jurisdiction to intervene in the proceedings if the charges are in fact statute barred. Because it is desirable that the matters raised by the Plaintiff's application should be determined before the District Court Judge embarks on a preliminary inquiry, Mr Fardell invites me to treat the Plaintiff's

application as an application invoking the inherent jurisdiction of the High Court or, alternatively, as an application for a declaratory judgment.

I will approach the matter by first considering whether the Plaintiff's contention that the charges under the Misuse of Drugs Act 1975 are statute barred is supportable.

Mr Howley submits that all the informations charging the offences of dealing with heroin contrary to s.6(1)(a) and (c) of the Misuse of Drugs Act 1975 and also the conspiracy charges laid under s.6(2A) of the Act are nullities because none of them were laid within four years from the date of the alleged offences. The submission is founded on s.28(2) of the Misuse of Drugs Act 1975 which reads:

"Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act or against any regulations made under this Act may be laid at any time within 4 years from the time when the matter of the information arose."

The reference is to s.14 of the Summary Proceedings Act 1957 which imposes a 6 months time limit on the laying of informations but which applies only to prosecutions for summary offences proper - not to those indictable offences which are triable summarily.

All offences against s.6 of the Misuse of Drugs Act 1975 are indictable offences (Misuse of Drugs Act, s.6(2)).

After the date when it is alleged that these offences were committed the Misuse of Drugs Act 1975 was amended by the Misuse of Drugs Amendment Act 1980, introducing a new subsection, s.28(2A):

"Notwithstanding anything in section 14 of the Summary Proceedings Act 1957 or subsection (2) of this section, any information in respect of any offence against section 6 or section 9 or section 10 of this Act may be laid at any time."

It is Mr Howley's submission that as originally enacted the Misuse of Drugs Act 1975 required that all informations charging offences under the Act - including those charging indictable offences - must be laid within four years of the date of the alleged offence: that s.28(2A), which came into force on 14 January 1981, cannot apply to the present informations because that would be to give retrospective effect to a penal provision.

It is my view that s.28(2) of the Misuse of Drugs Act 1975 is directed only to the case of those offences against the Act which are summary offences and which, if it were not for s.28(2), would be subject to a six months limitation period by virtue of s.14 of the Summary Proceedings Act 1957. In my opinion the

subsection does not limit the time within which informations can be laid for those offences against the Act which are indictable offences: that there has never been a time limit affecting indictable offences under the Misuse of Drugs Act and that as all the offences charged in the present case are in respect of indictable offences it is irrelevant whether s.28(2A) is to be given a retrospective effect.

As to the conspiracy charge laid under the Crimes Act, the only purpose of a charge under s.310 of the Crimes Act 1961 is to provide an alternative to a conspiracy charge laid under the Misuse of Drugs Act 1978 in order to meet a situation which would arise only if it were held that the charge under the Misuse of Drugs Act 1978 is statute barred. I have held that that situation does not arise and, accordingly, I take it that the Crown will not proceed further with the conspiracy charge laid under the Crimes Act.

In the circumstances it is unnecessary for me to determine whether the decisions in question are reviewable or whether the Plaintiff is able to invoke the jurisdiction of this Court by means of an application in some form other than now presented.

The application is dismissed. The  
question of costs is reserved.

*Ellie Piddock*

SOLICITORS: Keegan Alexander Tedcastle & Friedlander  
for Plaintiff  
Crown Solicitor, Auckland for Defendants