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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.313/85

LOW PRIORITY

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BETWEEN	FREDERICK DAVID HOWARD	
	Appellant	
AND	AUSTRALIAN POLICE	
	Respondents	

Hearing: 20 March 1986

Counsel: Mr Harder for Appellant
Mr Morris for Respondent

Judgment: 20 March 1986

JUDGMENT OF THORP J

An application has been made on behalf of Mr Howard for an order under Section 19 Fugitive Offenders Act, 1881 this being the second oral application. An earlier application similarly made in March 1985 was declined in a considered judgment given on 13 May 1985.

Whether or not there is jurisdiction to make a second application under Section 19, no objection was made by the Crown to my receiving a second application, which was done on Monday of this week. At that time Mr Harder put the application on the basis that the application for the warrant had not been made in good faith and, as I understood it, on the further grounds that the nature of the offence in all the circumstances would not justify

Howard being returned to Australia. The matter was stood over until today because it was impossible to find time to deal with it on Monday.

Today Mr Harder has called the two officers of the Australian Police Force who have come to New Zealand to effect the extradition of Mr Howard, the deferment of which in terms of my judgment of 13 May last has expired. From those officers he sought to obtain evidence on which he could advance the case that there was not sufficient evidence against Mr Howard of the offence of armed robbery under Section 75 A(1) of the Crimes Act in force in the State of Victoria, the charge on which the warrant is based. As I think Mr Harder must realise, the evidence which he obtained from those two officers gives no basis at all for the contention that that charge is without foundation.

As I understand the law it is for the applicant at this time to show this Court that there is an insufficiency of evidence, not for the Court to undertake an investigation of the sufficiency of evidence of the charge. Having completed a fruitless examination-in-chief of each Officer Mr Harder advised me he wished to be granted leave to recall the witnesses at some later date. Such application was in each case not considered, but instead was postponed until all the evidence was in. At that time I suggested to Mr Harder that he was in fact seeking an adjournment of the application. This he

confirmed, and supported his application by producing a letter from his instructing solicitor stating he hoped to be able to make further inquiries in Australia following his admission to the Supreme Court of that State on 3 April. That circumstance is suggested as providing the basis for the adjournment of the present application to 13 April.

The present extradition proceedings effectively commenced in this country on 28 March 1985 when a warrant was issued by one of our District Court Judges. Since then lengthy proceedings have ensued. Part of those proceedings have been the subject of consideration by the Court of Appeal. My own decisions on habeas corpus and the earlier application under Section 19 have also been the subject of Notices of Appeal, but for some reason unknown to me neither has been pursued. The matter has now reached the state where its further consideration is likely to raise the question whether the delay will itself constitute oppression: so one gets on the horns of a dilemma. I am satisfied there is no basis upon which I can reasonably assume that an adjournment of the length which Mr Harder seeks would enable this long outstanding matter then to be brought to a conclusion on a sounder basis. I believe that the understandable endeavours, not uncommon in this class of litigation, to defer by what ever legal means can be devised the removal of a citizen from his own country should be recognised for what they

are, and must be judged according to the normal rules of legal process. In the circumstances presented to the Court, those processes call for the rejection of the application for adjournment, and accordingly for rejection of the submission made today under Section 19. I think it not inappropriate to note that the matters now raised are all matters which must have been within Mr Howard's contemplation from the outset, and which plainly from the evidence before me have been in the contemplation of his advisors at least since last May when Mr Harder made enquiries from the Victorian Police about them. I note those matters because they seem to me to bear materially on the question whether the Court, in its rejection of the adjournment application, is being too precipitate.

The application under Section 19 is declined.