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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

T.55/87

**NOT  
RECOMMENDED**

IN THE MATTER of the Crimes Act  
1961

A N D

IN THE MATTER of an application  
pursuant to s.347  
of the Crimes Act  
1961 and an  
application for  
severance of trials

BETWEEN: COLIN GRAEME  
JURKOVICH and  
JAMES FLEMING

Applicants

A N D: THE POLICE

Respondent

Charge: Conspiring to supply heroin

Hearing: 30 April 1987

Oral Judgment: 1 May 1987

Counsel: S B W Grieve for Applicant JURKOVICH  
J Haigh for Applicant FLEMING  
T W Fournier for Respondent

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[ORAL] JUDGMENT OF HENRY, J.

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This is a motion for discharge pursuant to s.347  
of the Crimes Act relating to what is count no.2 in the  
proposed indictment which charges both accused with  
conspiring together to supply a Class A controlled drug,  
namely heroin.

Having heard counsel and having considered the deposition evidence, I have reached the clear view that there is insufficient evidence to place both accused on trial on that particular count. Because they are each facing other charges relating to the same circumstances, it would be inappropriate for me to make any comment on the evidence.

Accordingly I direct, pursuant to s.347, that no indictment on the count of conspiracy be presented against either accused and that they both be discharged in that respect.

As regards the remaining counts, they of course cannot now be heard together and there will be an order that they be severed and dealt with separately.

1 May 1987

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J S HENRY, J.