

BETWEEN DONALD CAMERON FORRESTER

Applicant

**NOT
RECOMMENDED**

A N D POLICE

Respondent

In Chambers: 25 June 1987

Counsel: S.C. Barker for Applicant
M.N. Zarifeh for Respondent

Judgment: 25 June 1987

ORAL JUDGMENT OF HOLLAND, J.

The applicant applies for bail. He appeared in the District Court at Christchurch on 23 June 1987 charged with breaking out of a building, namely the Avon Hotel on that morning and at the same time of being in possession of house breaking tools, namely a torch and a pair of gloves. He was remanded to 30 June without plea. His counsel informs me this morning that he intends to plead not guilty and to exercise his right to trial by jury. Counsel has made enquiries of the police and is informed that the first available date for the taking of depositions is 4 August.

This Court on frequent occasions has expressed its concern at the apparent inability of the District Court to adjust its timetables to accommodate earlier fixtures for the taking of depositions in cases where a Judge refuses bail. The gap between arrest and the time for taking of depositions in this case is not as great as has often been the case in the past. Nevertheless it seems to be too long.

I have asked the Crown Prosecutor for a narrative of the case against the accused. It appears to be a strong one but it would be a matter of some considerable surprise if the taking of depositions took more than half a day. I am also told that although the accused denied the offence on interview, he admitted being in the yard of this hotel at 2.20a.m. The police would appear to have a strong case.

The police have opposed bail on the grounds that they allege the applicant to be a chronic drug addict who is committing burglaries to support his drug habit. It is asserted that this offence was committed while he was on bail for a minor drug offence. He is at present serving a sentence of periodic detention imposed upon him only seven days prior to the occurrence of this offence on a charge of attempted burglary. He is 31 years of age. He has an extensive list and was first convicted of burglary 16 years ago. He has further convictions of burglary in 1972, 1975, 1976, 1979, 1980, 1982, 1985 and 1987. In the light of that history and the other offences, in particular the drug related offences which I have related, there must be a substantial risk of the applicant reoffending.

The Court must be concerned to ensure that the protection of the liberty of the subject and the presumption of innocence do not disappear in these days when burglary is so prevalent. On the other hand, the Court must equally be conscious of its need to protect the public and of the great temptation to an experienced burglar to continue his habit of burglary while on bail in anticipation that the sentence served

on him will not be much greater if he appears on a number of charges of burglary as against only one.

I am satisfied that in this case the discretion exercised by the District Court Judge was exercised on a proper basis and the application for bail should be refused. I am disturbed as to the date of hearing of the depositions. I invite counsel for the accused to take the matter up with the Registrar of the Court who should be responsible for the allocation of fixtures rather than the police.

A D Howell