

IN THE HIGH COURT OF NEW ZEALAND'
HAMILTON REGISTRY

20/9

T. 32/91

NOT RECOMMENDED.

THE QUEEN

1776'

v

S R

AND

J I

Hearing &
Judgment

30 August 1991

Counsel

C.Q.M. Almap for Crown
J. Allen Q.C. for Accused Rogers
Ms L. Jamieson for Accused Irwin
Mr Taylor for Slavich Family

ORAL JUDGMENT OF PENLINGTON J.

This is an application for an adjournment made by the two accused. They are charged with murder and aggravated robbery. The alleged crimes were said to have taken place on 26 February 1991. The accused were committed for trial in this Court on 22 April 1991.

After their committal for trial both accused applied for a change of venue. That application was heard by Mr Justice Fisher on 22 July. The application was dismissed.

On 12 August at the criminal callover, Mr Justice Doogue made a fixture for the trial. It is common ground that the case is likely to take two

weeks. The trial was accordingly set down for the fortnight commencing Monday, 30 September.

As to the appointment of counsel in this case, Mr Maclaren is senior counsel for the accused I . He and junior counsel, Mr Harding, were assigned on 8 May. Mr Allen, Q.C., and Mr Winter are counsel for the accused R . Mr Winter was assigned on 17 May. Mr Allen was not assigned until a later date, a matter to which I shall shortly refer.

Messrs Harding and Winter had previously dealt with the case from the outset in their capacity as youth advocates.

The assignment of Mr Allen was not raised until early August. He indicated his availability but the formal assignment was not made until 19 August after the fixture had been made.

In my view it is entirely appropriate that senior and experienced counsel should conduct the defence in this case. Originally, the application for the adjournment was sought on the grounds that Mr Maclaren would be appearing as counsel in the Court of Appeal on a criminal appeal on 1, 2 and 3 October, and that that fixture had been allocated on 30 July, that is to say prior to the making of the fixture for this present case. The clash of fixtures for Mr Maclaren was advised to the Crown Solicitor by Mr Harding on 12 August. Notwithstanding that intimation, the fixture was made and it seems that three days later a possible compromise solution was arrived at between the Crown Solicitor and Mr Maclaren. Then the present application was made by which time Mr Allen had been assigned as senior counsel for the other accused. By the commencement of today's hearing the Court was in a position to accommodate Mr Maclaren's position by starting this trial one week later. At today's hearing, however, further grounds were advanced for an adjournment of the trial, one of which grounds I would describe as substantial.

Of the other matters raised, they were: (i) the shortness of time Mr Allen would have for preparation because of his late assignment, (ii) the difficulties which Mr Maclaren still had because of a clash with another fixture, and (iii) the sitting of the School Certificate examinations by one of the accused approximately one month after the completion of the trial.

As to the first matter, I have considerable sympathy for Mr Allen's position. As to the second matter, I understand that the Crown Office in Auckland or the Court, or both, might have been able to accommodate a changed date. As to the third matter, I observe that the trial would have been completed before the examinations commenced and that there would have been still time for the accused to have readied himself for those examinations. I record that in my view these three grounds, individually or collectively, would not have persuaded me to grant an adjournment.

There was, as I have said however, a further point; a point which I regard as having substance. It concerns a Dr Sugrue. He is a doctor who practises in Whangarei. He was retained by Mr Winter almost immediately after the death of the deceased when Mr Winter was first instructed. A post mortem on the deceased's body was carried out by a pathologist instructed by the prosecution on 27 February. On 1 March Dr Sugrue and another person attended at the mortuary and there examined the deceased's body. Photographs were taken. Following this examination, Dr Sugrue reported to the defence and there were discussions between Mr Maclaren and Dr Sugrue. It is now found that Dr Sugrue is overseas and that he will not return to New Zealand until mid October. I was not informed exactly when the doctor went overseas other than he left these shores before the fixture was made on 12 August. I was also not told whether his overseas trip was made known to the defence. In any event, that is now really beside the point. The doctor will not be here until at the earliest half way through the trial if it started on 7 October; that is one week after the present fixture date.

Dr Sugrue, I am informed from the bar, claims expertise in injuries resulting from the discharge of firearms. Both the Crown and the defence are agreed first, that the manner of discharge of the weapon used in the homicide and secondly, the timing of the death of the deceased will be two critical issues at the trial.

The defence desire to have Dr Sugrue available to them to advise prior to the trial, to advise at the trial on the cross-examination of the Crown witnesses and possibly to give evidence for the defence. It is of the essence of the submissions made to me today that the absence of Dr

Sugrue before and at the trial would prejudice the conduct of the defence if the trial was to proceed on either 30 September or 7 October.

Mr Almao opposes the adjournment but he did not make any other submissions in respect to the critical issues earlier referred to. Likewise, he did not make any other submissions concerning Dr Sugrue's proposed assistance to the defence.

I am conscious that if an adjournment is granted that will mean further delay in the disposal of this case. I have regard to the fact that the events which will be under enquiry took place in February. I am also conscious of the fact that one of the accused is in a custodial situation. My task is to balance the interests of the Crown and the interests of the accused. Ultimately it is the interests of justice which must prevail. Here, in my view, justice dictates that the accused's counsel should be assisted before and at the trial by a medical adviser who has expertise on two of the critical issues involved in the case and who examined the deceased's body.

As I have said earlier, it is expected that the trial will take two weeks. The Court programme can be adjusted. In the light of the submissions which have been made, an adjustment has been made in anticipation of the decision which I am now about to give. The weeks of 2 and 9 December are available for this trial. Accordingly, I order that the trial be adjourned from the present commencing date of 30 September to the new commencing date of 2 December.

The suppression order previously made applies to the names referred to in this judgment.



P.G.S. PENLINGTON J.