

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

16/4  
AP 335/92  
AP 337/92

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BETWEEN GAEL FREDA HILL and  
CRAIG RAOUL HILL

Appellants

A N D MINISTRY OF AGRICULTURE  
AND FISHERIES

Respondent

Hearing: 3 February 1992

Counsel: C Lange for Respondent  
Appellants in person

Judgment: 3 February 1992

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ORAL JUDGMENT (NO. 3) OF HOLLAND, J.

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The appellants pleaded guilty in the District Court at Christchurch each to 10 charges under the Fisheries Act. The history of those charges and how they came before the Court has been dealt with by me in two judgments I delivered this morning, one on an application for an adjournment and one on an application for review of legal aid. What was said in those judgments should be incorporated in this judgment which is a judgment dealing with the appeals against conviction and sentence.

Craig Hill was fined a total of \$84,000 and costs on these 10 charges. His wife, Gael Hill, was fined \$42,000 and costs on the charges in respect of which she pleaded guilty. Their company, which faces a number of charges, has not yet been dealt with.

Mr Hill has spoken eloquently and politely as a litigant in person. He has had some difficulty in presenting submissions on the appeal against conviction because of his acknowledged lack of any legal expertise. Essentially he has submitted to me that Mr Boyack, the counsel who represented the company and who has advised him since his convictions and sentence, has persuaded him that there are good grounds for appealing in respect of the alleged abuse of Court process. He has told me that Mr Boyack has informed him of cases by way of precedent which support that submission.

I have invited him to indicate whether there are any facts different from those placed before Judge Holderness and he has not been able to draw my attention to any such facts.

Undoubtedly there were a huge number of charges brought against the appellants. Where it is alleged by the prosecution that offences have gone on either continuously or over a long period it is not surprising that a number of informations are laid. The law so requires. That in itself cannot be an abuse of process.

If in fact there is an embarrassment about the number of charges then an application could have been made for separate trials but no such application has been made and there is no question of abuse because ultimately the Crown took the view that it should proceed only on 10 representative charges against each of the two appellants.

They pleaded guilty. They had legal advice at the time they pleaded guilty. That is not a bar to this Court allowing an appeal but it is most unusual for the Court to allow an appeal against a conviction when a plea of guilty has been entered, particularly where, as is the case on the evidence before me, there is no suggestion that the appellants did not know precisely what they were doing and had the advantage of legal advice.

There are other aspects of abuse of process that were raised before the Judge but for the reasons expressed by him, with which I entirely agree, I am satisfied there is nothing in them.

What is particularly important, and what I have referred to Mr Hill without any adequate answer, is that there is simply not one vestige of evidence that the appellants did not commit breaches of the Fisheries Act. It is quite apparent that they consider genuinely and perhaps with some good cause that the provisions of the Fisheries Act are so onerous as to be quite unfair. I make no comment on that because I have not heard the evidence myself. As I have earlier said, the Judge's function is to apply the law. This Court is not a forum for persons who have offended against the law to endeavour to have the law changed so as to relieve them of their criminal responsibility and I suspect that that is the principal purpose for which this appeal was encouraged.

I have the benefit of a letter written by Mr Boyack to the appellants on 29 October in which he advises the

appeal. It is quite apparent that he is representing someone else who no doubt has an interest in having some form of abuse of process of this kind established. There is nothing in the letter that leads me to have any suspicion that there might have been a miscarriage of justice in this case insofar as the conviction is concerned.

The appeal against conviction is dismissed accordingly on the ground that the reasoning of the District Court Judge which is challenged is supported by this Court, but also on the ground that the appellants, with legal advice and following a lengthy hearing, pleaded guilty in the course of a hearing, and the circumstances are not such as would justify this Court in permitting them to re-open the issues that were before the Court.

The sentences were substantial but in relation to the maximum penalty of \$250,000 per offence they could be quite easily regarded as minuscule. Obviously, however, a fine should not be imposed on an individual where it is quite unreasonable to expect that individual either immediately or over a reasonable period to pay the sum.

Mr Hill has told me that the appellants are really quite unable to pay this sum because the boat, the fishing quota and their fishing gear has, as a consequence of their offending, been confiscated. A family trust was created last year. A new company has been formed and I am told that the company, which was a

co-offender with them, has simply been kept alive for the purpose of meeting a creditors' bill of some \$64,000. There is a fishing processing factory which the appellants are operating. There is quite inadequate financial information before me to indicate that they are not able to pay these fines.

I also take into account that although the forfeiture of the other assets earlier referred to is automatic, the question of release from forfeiture is a matter for the discretion of the Minister and not the Court. It is in my view appropriate that the quite substantial fines should exist and be before the Minister at the time that he is considering any application for release from forfeiture.

It is obvious that Parliament decided that extreme deterrent sentences were required to be imposed on fishermen who breach the provisions of the Fisheries Act. It is the Court's function to carry out the will of Parliament in this regard although, as I have earlier said, that does not warrant imposing a fine that simply cannot reasonably be paid.

On an appeal the onus is on the appellant to establish that the sentence is manifestly excessive and the only ground that could be advanced was that the appellants cannot pay the fine. I am not so satisfied.

The appeals against conviction and against sentence are dismissed.

