

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

130/4

AP 123/93

556

BETWEEN

JARDEN

Appellant

NOT

RECOMMENDED

A N D THE POLICE

Respondent

Hearing: 22nd April 1993

Counsel: M.J. Logan for Appellant  
J. Pilcher for Respondent

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ORAL JUDGMENT OF WILLIAMSON J.

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The Appellant, Jarden, was refused bail by the District Court upon the grounds that such an order was necessary for the safety of the complainant and because the Appellant's history of previous offending pointed to a likelihood of further offending. He appeals against the refusal of bail. On his behalf it is submitted that the presumption of innocence should apply in that he denies the offence and a hearing cannot take place until the 30th April. In the meantime he is in custody and has been since his arrest on the 18th April. If the matter does proceed to hearing on the 30th, then he will have been in custody for 12 days before his guilt or innocence can be established.

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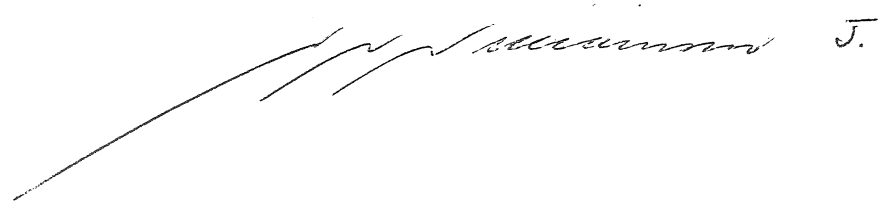
The charge against him is one of breaching a non molestation order pursuant to s.16(b) of the Domestic Protection Act 1982. The maximum term of imprisonment on conviction for such an offence is 3 months. It is argued that if he were to spend 12 days in prison then he will have served a substantial amount of any sentence which would be applied if he were convicted. Counsel for the Appellant argues that the matter is essentially one of credibility between complainant and the Appellant and that even if a conviction were entered then the offence would be at the lower end of the scale of such offending because the Appellant had not assaulted the complainant in any physical way or harrassed or molested her at her home.

The serious element of this matter and the one which no doubt influenced the District Court Judge is that the Appellant, since October 1992, has been convicted of four charges of breach of non molestation order and has also been convicted of an offence of assault. He has been sentenced to periodic detention, terms of imprisonment and ultimately to 3 months' imprisonment. Continual breaches of the non molestation order must suggest that the Appellant has either become obsessed with the complainant or is just not prepared to obey the non molestation order. Until the facts can be properly established at a defended hearing there must be concern about the safety of the complainant and the likelihood of further re-offending. Being remanded in custody is not a form of punishment of the Appellant for his previous offences but rather a precaution that the District Court has taken to avoid the possibility of re-offending or further emotional injury or otherwise to the complainant.

This is an appeal. After weighing up all of the points which have been properly argued on behalf of the Appellant, I have not been

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brought to the view that the District Court Judge was in error and accordingly this appeal must be dismissed.

A handwritten signature in black ink, appearing to read 'J. [unclear]', with a long horizontal flourish extending to the left.

**Solicitors:**

Lane Neave Ronaldson, Christchurch, for Appellant  
Crown Solicitor, Christchurch, for Respondent