

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

25/2

AP 41/94

100

BETWEEN

CLAREY

Appellant

A N D

THE POLICE

NOT  
RECOMMENDED

Respondent

Judgment            18 February 1994  
Counsel             T W Fournier for Applicant

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ORAL JUDGMENT OF WILLIAMSON J

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Domestic strife can produce powerful and unreasonable emotions; indeed, on occasions, it can lead to the most serious of offences. In this case a 42 year old man, with no previous convictions, is appealing against refusal by the District Court to grant him bail. He has appeared twice in the District Court on charges relating to alleged offences committed on 8th and 9th February of assault on a female, theft from the same female and arson of premises formerly used by the Appellant and the Complainant. It is alleged by the Crown that these offences all have a basis in the domestic strife between the Complainant and the Appellant.

Upon his arrest the Appellant made various threats in relation to the Complainant. The police feared for his psychiatric condition and as a result, when he first appeared in Court on 9th February, an order was made that he be remanded in custody and a report sought under S.121 of the Summary Proceedings Act 1957. At that stage bail was refused upon the following four grounds:

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1. Although no prior offences these are serious allegations and charges.
  2. There is the real concern about the threats made at the police station.
  3. Psychiatric nurse's report indicates the defendant is under considerable stress and there is clearly a lot of heat in this matter at present.
  4. Concerns of depressive actions if released on bail. "

The Appellant appeared again in the District Court on 16th February. At that stage the consultant psychiatrist reported that he had not been able to examine the Appellant and therefore requested a further remand period of one week to enable the examination and a report to be prepared. The District Court Judge, in refusing bail on that occasion, apparently indicated that he desired to wait for the psychiatric examination and report to be completed before further considering bail.

In this Court Counsel for the Appellant has made five submissions in support of the appeal. They are that:

1. The District Court Judge was in error in giving too much weight to the fears of the Complainant.
2. Too little weight was given to possible safeguards which could be put in place, namely, residence, curfew, non-association, passport and reporting conditions.

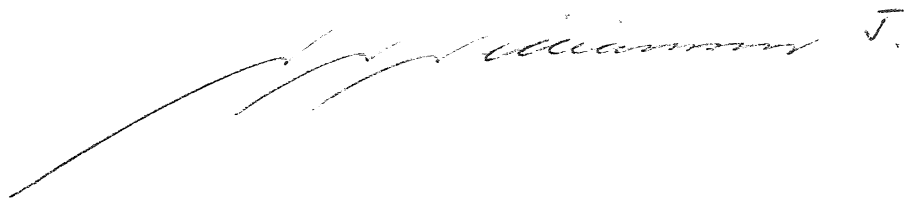
3. The Appellant was suffering particular hardship because of a back condition and the need for adequate medication.
4. The Complainant had made attempts by letter and in person to contact the Appellant indicating an absence of continuing fear on her part.
5. The District Court Judge, on 16th February, was in error in delaying a decision until a report was available.

There is no doubt in this case that the allegations made against the Appellant, and in particular the charge of arson, are serious. These allegations, coupled with the threats made at the police station, understandably give rise to an apprehension that the Appellant might be unable to control his reactions. An initial report from the psychiatric nurse refers to the Appellant's depression, financial problems, personal difficulties and alcohol problems which may constitute an emotionally explosive situation.

While weight always has to be given to the presumption of innocence and to the understandable difficulties caused to a person of this age being held in custody, those matters have to be balanced with consideration of the protection of a Complainant or other members of the public. Until enough information is available the cautious approach is to remand the Appellant in a situation where he is unable to commit any acts against the Complainant or himself while satisfactory precautions are investigated. The decision of the District Court Judge, on 16th February, to wait until the report was available is an extension of the same policy adopted on 9th February.

While I accept that there is substance in the submissions made on behalf of the Appellant, they have not brought me to the view that the decision made by the District Court Judge on 16th February, to wait until the Court had the advice of a consultant psychiatrist, was in error.

Accordingly in my view this appeal must be dismissed. The situation may well alter when a report is available and when the Court can have some confidence that those precautions and supports that are being investigated and put in place will give some confidence that the Complainant and the public will be protected.

A handwritten signature in black ink, appearing to be 'J. Williams', written in a cursive style.

Solicitors    T W Fournier, Christchurch for Appellant  
                  The Crown Solicitor, Christchurch for Respondent