

22/7 NZLR

JUDGMENT DISTRIBUTION LIST

NAME OF PROCEEDING: MCCALLUM V ACC

REGISTRY AND FILE NUMBER: BLENHEIM AP 2/94

JUDGMENT DATE: 19/7/94

DESCRIPTION AND CATCHPHRASES

SENTENCE - Appeal against order for costs on s. 19 Criminal Justice Act 1985
discharge dismissed

1078

IN THE HIGH COURT OF NEW ZEALAND
BLLENHEIM REGISTRY

AP 2/94

BETWEEN NEVILLE BRUCE McCALLUM

Appellant

A N D ACCIDENT REHABILITATION &
COMPENSATION INSURANCE
CORPORATION

Respondent

Hearing: 19 July 1994

Counsel: Appellant in person
V.M. Sugrue for respondent

Judgment: 19 July 1994

JUDGMENT OF DOOGUE J

This is an appeal against an order for costs imposed upon a discharge under s. 19 of the Criminal Justice Act 1985. The appellant was ordered to pay \$500 costs.

The appellant has made plain that he is not endeavouring to avoid the payment of the \$500 costs but found it difficult to understand how those costs could be ordered against him in the particular circumstances of the case. I have already to the best of my ability explained to him in straightforward language my understanding of why the costs would have been imposed by the District Court judge, who, after a considered decision, discharged the appellant following a plea of guilty to an offence of strict liability, the charge being of a representative nature, but nevertheless

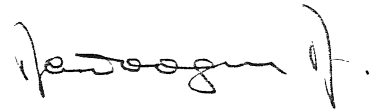
ordered that there be a contribution towards court costs. It was undoubtedly the view of the District Court judge that that was merely a contribution to costs rather than any form of indemnity in respect of an information which had been properly brought and where I am informed there had been some prior taking of evidence: prior, that is, to the plea of guilty.

The appellant's stance has been an entirely responsible one. His concern was that he had originally faced another charge by the same prosecuting authority. He had endeavoured unsuccessfully to communicate with the prosecuting authority in respect of that charge. The prosecuting authority had indicated the day before the hearing for that charge that it would withdraw that charge and he had by that time incurred substantial legal costs in respect of it. In those circumstances he found it hard to understand how he could be ordered to pay costs to the prosecuting authority when, with the course that matters had taken, he was unable to obtain any order against the prosecuting authority in respect of his own costs on the charge which was withdrawn.

It is not entirely clear whether the District Court judge at the time that he imposed costs was aware of the background. The appellant was at that time represented by extremely experienced and able counsel and it is fair to surmise that the District Court judge was made aware of all material matters in respect of the background to the matter before him.

When the District Court judge was exercising a discretion in a manner highly favourable to the appellant in discharging him under s. 19 of the Criminal Justice Act 1985, and when the order for costs made by the District Court judge was of a relatively modest amount, it cannot be said, and indeed it is not suggested, that the sum is of itself manifestly excessive or wrong in principle. All that can be said for the appellant is that there were the somewhat exceptional circumstances relating to the withdrawal of the other charge in respect of which he had incurred substantial legal costs of his own. That of itself, however, cannot be sufficient ground for overturning the particular order of the District Court judge when it is not at all clear that the District Court judge was not aware of the general circumstances relating to the matter and the ultimate outcome was one which was of itself entirely favourable to the appellant.

Whilst, therefore, I respect the reasons of the appellant which have led to his appeal, the result must be that the appeal is dismissed.

A handwritten signature in dark ink, appearing to read 'H. J. Wicks', is written in a cursive style.

Solicitors for defendant:
Gascoigne Wicks, Blenheim

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