

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

AP 106/94

BETWEEN

BROOKS

Appellant

AND

PENN

Respondent

Hearing &
Judgment

21 November 1994

Counsel:

N. Deobhakta for Appellant
Ms G.T. Atimalala for Respondent

ORAL JUDGMENT OF PENLINGTON J

This is an appeal against a sentence of 8 months periodic detention imposed in the District Court for contempt of Court. The background is as follows.

On 14 December 1992 the respondent obtained summary judgment against the appellant in the sum of \$98949.98. Subsequently the respondent applied for a distress warrant and for an examination of the appellant. In doing so he incurred costs in the sum of \$1265.

On 7 March 1994 an examination was held by the Deputy Register of the District Court at Huntly. As the result of that

examination the appellant was ordered to pay \$100214.98 by instalments of \$1000 per month. The first payment was to be made on 30 April 1994.

On 3 May 1994 the first payment was received by the respondent from the appellant. Thereafter no further monies were paid in spite of a promise by the appellant contained in a letter of 3 June to make further payments.

On 21 July 1994 the respondent applied under s.84(O)(1) of the District Courts Act 1947 for an order that the appellant undergo periodic detention on the grounds: (a) that the appellant had been examined under s.84B of the District Courts Act 1947; and (b) that the judgment debtor had sufficient means to pay the judgment but had refused to do so and that all other methods of enforcing the judgment had been considered or tried and were inappropriate or unsuccessful

The application, an affidavit in support and a summons to the appellant requiring his attendance at the District Court were served on the appellant. Attached to the summons was a notice which indicated *inter alia* that the appellant was entitled to apply for Offenders Legal Aid if he wished to have legal representation but could not otherwise afford it.

The application under s.84(O) came before a District Court Judge on 29 September 1994. The appellant appeared on his own behalf. He was not represented by counsel. The learned Judge

imposed a sentence of 8 months periodic detention. The appellant subsequently appealed to this Court.

The primary ground of appeal is that the learned Judge exceeded his jurisdiction. Section 84(O)(1) states that the Court may on the application of a judgment creditor "order the respondent to undergo periodic detention for such period not exceeding in any case six months as the Court thinks fit."

For the respondent it is conceded that the learned Judge did exceed his jurisdiction. The respondent consents to the matter being remitted to the District Court.

The appellant's second ground of appeal was that s.10 of the Criminal Justice Act 1985 which relates to legal representation and which is operative when a judgment creditor applies to have a judgment debtor committed for contempt had been breached. See s.84(O)(10) of the District Courts Act 1947. I do not consider having regard to the fact that the learned Judge clearly acted in excess of his jurisdiction that I need to decide this second ground of appeal.

I propose to remit this matter to the District Court for a rehearing. No doubt the appellant will on or before the matter is reheard take steps to obtain legal representation either by private retainer or by an application under the Legal Services Act 1991.

The appeal is accordingly allowed. The sentence of 8 months periodic detention is quashed. I order a rehearing of the

respondent's application that the appellant undergo periodic detention.



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P.G.S. Penlington J