

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

AP 91/95

BETWEEN

ELLEN

Appellant

A N D THE POLICE

Respondent

Hearing: 19 April 1995

Counsel: C Eason for Appellant
 J Eaton for Respondent

ORAL JUDGMENT OF WILLIAMSON J.

This is an appeal against refusal of bail. The appellant, Ellen, has been charged with attempted sexual violation and aggravated burglary. It is alleged that at 1am on 14 March he entered a property through the garage, disconnected the telephone, and then went to the complainant's bedroom. She is a solo mother living alone with her two year old daughter. After a struggle in which she escaped through a bedroom window onto the back lawn it is alleged that the indecent actions took place and were stopped only when a sensor light at a neighbour's house activated and lit up the back lawn area.

According to the information supplied by the prosecution the appellant's fingerprints have been found at the house and he has been positively identified by the complainant from photographs.

The Police were immediately called and they located the appellant in the garage of his own property; he was hiding from them.

The appellant is a 24 year old with a number of convictions for dishonesty and in particular for burglary. He also has some convictions for violence.

In dealing with applications for bail it is necessary to consider whether or not the accused person is likely to answer the bail and whether the bail is in the public interest. The Court is also entitled under s.10 of the Victims of Offences Act to information concerning the attitude of any victim.

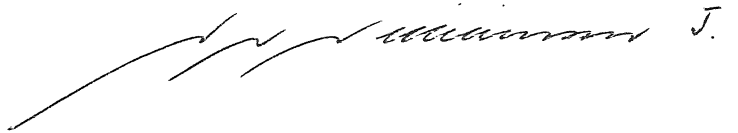
In this case the District Court Judge noted in refusing bail that it was because firstly it was serious offending with apparently strong evidence; secondly the attitude of the victim; and thirdly previous offending including some violence and potential violence.

In support of the appeal counsel has argued that the appellant could now live at an area far removed from the complainant and that he would happily accept conditions which would restrict his movements. It was submitted that in view of the substantial delay before trial and the appellant's denials that this would be an appropriate case for bail.

On appeal it is for the appellant to show that the District Court Judge has made an error in principle, or that there are substantial accepted and relevant facts which were not before the District Court

Judge (not being of a disputed category where they would require a fresh bail application).

In this case the offence is a very serious one involving intrusion into a private dwelling at night. The method of entry and the disconnecting of the phone indicate a particularly sinister motive. The evidence prima facie appears strong and in view of the seriousness of the offence and the nature of the evidence the pressure on the appellant given bail not to answer it or to take some other extreme step would be considerable. Weighing those matters I am of the view that it has not been shown that the District Court Judge was in error and accordingly the appeal must be refused.

A handwritten signature in black ink, appearing to read 'William J.', with a long, sweeping underline.

Solicitors:

Parry Field & Co, Christchurch, for Appellant

Raymond Donnelly, Christchurch, for Respondent