

NOT
RECOMMENDED

NZ LR

IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY

AP16/03

BETWEEN

EVES

Appellant

AND

POLICE
Respondent

Hearing: 16 October 2003

Appearances: Appellant in Person
JB Ruthven for the Crown

Judgment: 16 October 2003

ORAL JUDGMENT OF RODNEY HANSEN J

Solicitors: Auld Brewer Mazengarb & McEwen, P O Box 738, New Plymouth for the Crown

[1] Mr Eves has appealed against his conviction for driving with excess blood alcohol.

[2] When the appeal came before Chambers J on 1 September 2003, he recognised that the essential grounds of the appeal involved a complaint by Mr Eves as to the way his lawyer had conducted his defence. A general description of his complaints is set out in paras [2] and [3] of Chambers J's minute of 1 September. Chambers J goes on to record that he explained to Mr Eves that in order to progress the appeal, he would have to swear an affidavit setting out the ways in which his lawyer's conduct of the case were alleged to be deficient. He was advised that he would need to waive privilege to enable the Crown to obtain an affidavit from his lawyer and he did so. Chambers J then made timetable orders which included a direction that Mr Eves file and serve his affidavit on or before 15 September 2003. There was provision for the Crown to reply and for cross-examination of deponents if required. A direction was made that a fresh date for the hearing of the appeal be allocated.

[3] The Crown applies to strike out the appeal for want of prosecution. No steps have been taken by Mr Eves in accordance with the timetable orders made by Chambers J.

[4] Mr Eves has told me today that he has endeavoured to comply with the direction to file an affidavit but has had a lot of computer problems which have prevented this occurring. This is an insufficient reason for non-compliance with the orders. It is now over six weeks since Mr Eves was put on notice that he had to take steps in order progress the appeal. I am satisfied that there has been a wilful failure to prosecute the appeal without good reason. The Crown is entitled to the order it seeks.

[5] The appeal is struck out.

