IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CRI-2004-485-52

BETWEEN	DARREN STUART FINLAYSON	
	Appellant	
AND	POLICE	
	Respondent	

Hearing: 27 April 2004

Appearances: B S Yeoman for appellant
I R Murray for respondent

Judgment: 27 April 2004

(ORAL) JUDGMENT OF MACKENZIE J

---

[1] This is an appeal against a refusal of bail on an application made before Judge Kelly in the District Court on 5 April 2004. The application was made when the defendant appeared on four charges. The charges were, briefly: entering a building without authority and with intent to commit a crime; secondly, obtaining dishonestly credit cards and a Lotto ticket; thirdly, being found in a public place behaving in a manner from which it can reasonably be inferred that he was preparing to commit a crime; and, fourthly, stealing a mobile phone.

[2] At the time the defendant was already on bail in respect of a series of other charges. Mr Yeoman has advised me that he had spent some time on remand in custody on those charges, but bail was subsequently obtained when the charges were addressed and the defendant has spent time in custody, which Mr Yeoman says may well meet any sentence which is imposed on him in respect of those charges. However, the fact that he was already on bail means that the provisions of s 12 of the

Bail Act apply, and indeed, as the learned District Court Judge noted, both subsection (1)(a) and subsection (1)(b) apply.

[3] Briefly, the facts as alleged are that on the night of Sunday, 4 April the defendant was observed looking into windows of cars in Newtown, was confronted by a witness and ran off. It is alleged that he forced a rear passenger side window and removed mobile telephone accessories to the value of $580. It is alleged that he then forcibly entered a dwelling-house and removed a cellular phone and a Lotto ticket and two credit cards. The indication is that the defendant will plead not guilty to these charges.

[4] As I have already noted, s 12 applies, so that the onus was on the defendant to satisfy the learned District Court Judge that bail should be granted. The defendant has an appalling list of previous convictions. He has 134 previous convictions, 29 of those for burglary, 22 for thefts from vehicles and unlawful interferences, 11 violence-related convictions and four fraud convictions. He also has a conviction for failing to answer District Court bail. All of those matters were taken into account by the learned District Court Judge. In those circumstances I consider that the learned District Court Judge was right to hold that the defendant had not satisfied the Judge on the balance of probabilities that the defendant would not while on bail commit further offences of the type described in s 12(5).

[5] The other factors which the Judge also took into account in my view also justified the refusal of bail.

[6] Accordingly, the appellant has not satisfied me that the decision was plainly wrong. Indeed, I consider the decision to be plainly right.

[7] For those reasons the appeal will be dismissed.

Solicitors
Bryan S Yeoman, Lower Hutt, for appellant
Luke Cunningham & Clere, Wellington, for respondent