IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI 2009-092-3881

THE QUEEN

v

MAKA TUIKOLOVATU

Hearing: 19 June 2009

Counsel: C M Ryan for Crown
J M Northwood for Accused

Judgment: 19 June 2009

ORAL JUDGMENT OF RONALD YOUNG J
(Bail Application)

Introduction

[1] Mr Tuikolovatu has been committed for trial on a charge of theft and being an accessory after the fact of murder. He now seeks bail.

[2] Previous bail applications have been refused but there are a number of changed circumstances justifying this new application and I treat it, therefore, as such.

[3] The accused was first charged with these offences in June 2008. The Police found at the applicant's address items from a deceased's handbag. On 16 June last

year a man snatched a handbag from the deceased's car. The deceased got out of her car to remonstrate with the thief. The Crown alleges a car with the thief then ran over the victim who subsequently died. The Crown say the applicant had been in the car and was a party to the theft but not to the murder and was, therefore, an accessory after the fact of the murder by accepting and taking into his possession the contents of the handbag. The applicant admits receipt of the handbag.

[4] At the time of arrest the applicant was facing firearm charges. These have now been dealt with by the applicant being convicted of unlawful possession of a firearm and sentenced to a term of imprisonment served while on remand awaiting trial.

[5] Section 12 of the Bail Act 2000 applies to the applicant's circumstances. It is for him to convince this Court that if released on bail he would not commit a serious property or violent offence.

[6] In addition, the applicant has a history of breaches of bail and some previous convictions relating to firearm charges.

[7] The Crown opposition to bail is in part based on the s 12 presumption and in part based on the applicant's past record of offending, his propensity to offend on bail and his history of failing to obey Court orders as well. Originally the objection to bail was also based on claims of witness intimidation and evidence interference but there is no evidence to support these allegations and they should be set to one side.

[8] The Crown stresses the strength of the case, the likelihood of imprisonment and the applicant's past circumstances, his offending on bail and his preparedness to breach bail and his failure to obey Court orders.

[9] The applicant's case is that his personal circumstances have significantly changed since he was first remanded in custody on these changes in June 2008.

[10] In his affidavit he advises that the mother of his partner, with whom he has a two year old child has cancer and is terminally ill. In addition, his partner has been ill, recently admitted to hospital with a serious infection.

[11] The applicant says he wants the chance to help with his family including caring for his young child given the illness in the family. He says, therefore, that these circumstances will mean that he will avoid offending on bail and reliably stick to his bail terms. He also advised and his partner confirms that she will have the applicant to say at her house until trial. That house is accepted as a suitable residence.

[12] The applicant does have for someone so young a bad history of offending beginning in the Youth Court in 2004. However, until 2007 he had never been imprisoned. His imprisonment in late 2007 was mostly for credit card fraud, theft and breaches of community work. I have already mentioned the possession of firearm charge for which he received eight months' imprisonment. Without undervaluing the seriousness of all this offending to date, it cannot be said to be at the highest level of seriousness.

[13] His regular breaches of community work, however, do show a worrying disregard for Court orders and the fact that he has been convicted twice in relation to firearms also worrying.

[14] The current date of the trial is April 2010. The applicant here does not deny being in possession of the items stolen from the deceased but denies knowing of the killing and therefore denies being an accessory to murder.

[15] When the trial, therefore, is held for the applicant if this application is refused he will have been in custody for approximately twenty-two months and if parole eligibility is taken into account it is likely he will be in custody at least for the period if not beyond the period of any sentence that might be imposed upon conviction.

[16] This is a case finely balanced. By a fine margin I have decided that the applicant should have bail. He satisfies me that the change in his circumstances

relating to his serious family illness means that I can be satisfied he will not commit serious property or violent offences if given bail. He has real incentives now to behave if, as he says, he wants to support his family.

[17] I wish, however, to make it absolutely clear any breach of bail, even if slight will almost certainly mean a remand in custody until trial. The applicant, Mr Tuikolovatu should be clear about that.

[18] I am prepared, therefore, to grant bail on the following conditions which will be tight:

a) he resides at 3B Vilma Place, Otara;

b) there will be a curfew requiring him to stay inside that address from 6.00 p.m. at night until 7.00 a.m. in the morning;

c) he is to come to the door of the house at Vilma Place should the Police check on that curfew and on his bail terms;

d) he is not to associate with any of the co-accused;

e) he is not to associate with any of the crime witnesses;

f) he is not to consume alcohol or drugs;

g) he is not to associate with any members of the Killer Beez gang.

[19] I make it clear that the non-association clause does not simply mean not directly seeing or talking to someone. It means no contact in any way whatsoever whether by text, telephone, email, cell-phone or otherwise.

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Ronald Young J

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