

**IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY**

CRI 2008-019-9349

THE QUEEN

v

CYRIL CHAMP MACDONALD

Hearing: 26 June 2009
Counsel: R G Douch for Crown
T Sutcliffe for Accused
Judgment: 26 June 2009

**ORAL JUDGMENT OF RONALD YOUNG J
(Bail Application)**

[1] Mr MacDonald faces trial in October this year for attempted murder and the alternative wounding with intent. He now appeals against a refusal to grant electronically monitored bail. I accept, however, the appropriate course for me is to reconsider the question of electronically bail anew.

[2] Mr MacDonald was granted bail by a community magistrate in November 2008 when he was first charged arising from these matters. The police successfully appealed. Judge Harland in the District Court refused bail.

[3] The Judge's motivating reason for refusing to grant bail was to protect the victim. The events, which gave rise to the charges, illustrated an extreme form of

jealousy and some mental instability. In early January 2009 the applicant sought electronically monitored bail in the District Court. Judge Wolff refused the application again based primarily on concerns for victim safety. Now there is a further application for electronically monitored bail in this Court although as I have said it is an essence of challenge to the decision of Harland and Wolff JJ.

[4] Turning to the alleged facts. The applicant and the complainant were in a relationship. The applicant ended the relationship a few weeks before the attack. There was some aggressive texts sent by the applicant to the complainant. The complainant says the applicant then arrived at her house one day, stabbed her three times and tried to strangle her. She has very deep wounds to her hands, and a knife wound to her stomach. The applicant then tried to kill himself. It is no exaggeration to say that it is simply fortunate that either one or both did not die that day.

[5] The applicant has no previous convictions of note. Understandably the victim and her family strongly object to bail. They fear for their safety.

[6] The applicant is entitled, of course, to the presumption of innocence. However, without expressing any view as to the appropriateness of the charges the applicant does not deny the essential facts. In those circumstances a conviction for a serious crime seems probable and a lengthy term of imprisonment also probable.

[7] The applicant does not suggest he is suitable for bail without electronic monitoring. He says, however, electronic monitored bail is a sufficient protection for the complainant and will provide the appropriate reassurance to her and her family.

[8] The proposed electronic bail is at a farmhouse near Whangarei. The family and residence are all suitable. It is also proposed the applicant's father reside with him during the remand to provide additional reassurance. The applicant's case for bail stresses, therefore:

- a) that he has no past which justifies the inference he will offend on bail or fail to answer his bail;

- b) the residence he proposes to live at is suitable with responsible adults together with his father who can keep a close eye on him;
- c) the applicant has not tried to contact the complainant since the charges were laid and his mental health has significantly improved.

[9] The Crown in opposition stress:

- a) the seriousness of the charges and the likelihood of conviction and imprisonment;
- b) his mental instability;
- c) the likelihood the applicant will attempt to contact the complainant and further offend; and
- d) the victim's views which are strongly against the granting of bail because of her fear of attack by him.

[10] It seems probable that the applicant will be convicted of a serious crime likely to result in a significant sentence of imprisonment. The applicant has a past history of being mentally unwell. These events seem to have arisen from an irrational rage from jealousy. I note the applicant, after his alleged attack on the complainant, made a serious attempt at suicide. While self harm risk is not a basis to refuse bail it emphasises that the appellant's mental state has not been rational and underlines the potential risk he poses.

[11] While he has no history of offending or offending on bail or failure to attend court the applicant now faces very serious charges with the prospect of lengthy imprisonment. The incentives are therefore toward avoiding trial. Most vitally, however, as both District Court Judges recognised, is the risk to the victim, which must continue to be assessed as high until there are compelling reasons to convince this Court otherwise.

[12] I acknowledge the efforts of the applicant's family to find him an appropriate residence and to do all they can to address the obvious risk the applicant poses. However, at the time of the alleged offending the applicant was a volatile mix of high emotion, aggression and mental instability. Both he and a young woman could easily have died. This state of mind illustrates a very high level of danger of re-offending with respect to this complainant.

[13] Given, therefore, her understandably strong reasons to object to bail, the relatively modest time before trial (four months), the strength of the Crown case, the likelihood of a significant sentence of imprisonment on conviction, and the applicant's history of mental instability and extreme jealousy in relation to this complainant I am not prepared to grant bail.

[14] The application is, therefore, refused. The applicant will be remanded in custody until trial.

Ronald Young J

Solicitors:

R G Douch, Almao Douch, PO Box 19 173, Hamilton, email: rgd@almaodouch.co.nz

T Sutcliffe, PO Box 19 021, Hamilton