

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

CRI-2007-063-002028

THE QUEEN

v

KAREN ALICE ROBINSON

Hearing: 30 October 2009

Counsel: G Hollister-Jones for the Crown
J N Briscoe for the prisoner

Judgment: 30 October 2009

(ORAL) JUDGMENT OF STEVENS J (No 2)
(Bail)

Solicitors/Counsel:
Crown Solicitor, PO Box 13063, Tauranga 3141
J N Briscoe, Davys Burton, PO Box 248, Rotorua 3040

Introduction

[1] The sentencing of the prisoner on one charge of manslaughter was to have taken place this morning. Her counsel, Mr Briscoe, filed a memorandum seeking an adjournment of the sentencing. Various grounds were advanced, including the fact that Mr Briscoe had only recently been instructed. He said that he had received a large amount of information from the prisoner's previous counsel and he needed time to take detailed instructions on it and to prepare for the sentencing.

[2] In the circumstances, the application was not opposed by the Crown. Mr Hollister-Jones recognised the predicament which defence counsel found himself in with regard to instructions and acknowledged that this would be an appropriate case for the Court to grant an adjournment.

[3] I therefore formally adjourn the sentencing. The sentencing will take place at 9am on Friday, 27 November 2009 in the High Court at Rotorua.

[4] Given Mr Briscoe's recent involvement as counsel, I direct the Crown to file and serve a summary of the matters relied upon at sentencing, and in particular the injuries suffered by Melissa Sale. I further direct the filing of an updated submission dealing in particular with the case of *R v Broadhurst* HC AK CRI 2006-057-1845 24 April 2008 and *R v Broadhurst* [2008] NZCA 454. Such summary and updated submissions are to be filed and served by 5pm on Friday, 6 November 2009.

Bail

[5] The original judgment on bail was given at the conclusion of the trial on 12 August 2009. Bail was granted on the basis that the Court was satisfied that Mrs Robinson had discharged the onus on her to demonstrate why bail should be granted. The judgment recognised that the circumstances of this case are somewhat "special". The judgment referred to the various factors that must be considered under s 13 of the Bail Act 2000.

[6] One of the factors that influenced the grant of bail on that occasion, was the support which Mrs Robinson's counsel said was available to her. I stated at [14]:

Counsel confirmed that the wider family will commit wholly, and without reservation, over the period until sentence to support Mrs Robinson and the immediate family with what they are going through.

[7] In addition, I stated at [18]:

I appreciate that this is a difficult time for all concerned. The support of all family members will be required to ensure that this difficult period can be approached sensitively and supportively and with compassion in the lead up to sentence.

Crown submissions on bail

[8] Mr Hollister-Jones expressed a number of concerns which had emerged since the grant of bail at the end of the trial. These included the failure of Mrs Robinson to cooperate with Probation Services in the preparation of a pre-sentence report, the fact that a health assessor's report was not available, the fact that Mrs Robinson has been engaging in correspondence with some of the witnesses and their employers or associated organisations, and the fact that she has been writing extensively on a blog site to which the Court was referred.

[9] Crown counsel noted that the grant of bail at the end of trial was given for compassionate grounds to assist the family and to facilitate access to any necessary medical help. Yet it seems that this grant of bail has been abused and used for ulterior and improper purposes. Certainly, on the information available to the Court, that submission has a considerable degree of resonance.

[10] Earlier, the Crown had made an application to vary the terms of bail. This was based on evidence suggesting that Mrs Robinson was a flight risk. This concern has now passed and Mr Hollister-Jones confirmed that he was no longer seeking a variation of bail to deal with that risk.

[11] However, he confirmed that the Crown position had changed, particularly regarding the likely sentence. In this regard, he has submitted that, as set out in his

preliminary submissions on sentencing, a term of imprisonment is inevitable. This would be an important factor for the Court to consider when determining bail: see s 13(3)(a) of the Bail Act.

[12] Therefore, Mr Hollister-Jones submitted that the starting point now is for a remand in custody. I agree with that submission.

Submissions on behalf of the prisoner

[13] On behalf of the prisoner, Mr Briscoe applied to continue bail. He referred to the unusual circumstances of the case, to the prisoner's family circumstances and the fact that there were potential difficulties with his obtaining instructions if the prisoner were remanded in custody.

[14] Mr Briscoe emphasised the fact that he had only recently been appointed and had a considerable amount of material to go through. Thus there was a risk that the prisoner's position on sentencing might be prejudiced if there were to be a remand in custody.

[15] Mr Briscoe then sought an opportunity to take further instructions from the prisoner and her family regarding how the concerns expressed by the Crown might be met.

[16] The first point was to obtain an assurance that the prisoner would meet with Probation Services to facilitate the preparation of the necessary pre-sentence report. Mr Briscoe undertook to contact the report writer and to advise that Mrs Robinson was now willing to meet and be interviewed and provide relevant information. I have noted a personal undertaking from the prisoner to so cooperate.

[17] Secondly, Mr Briscoe confirmed that the prisoner would meet, cooperate with and assist the health assessor appointed by the Court. In a sense, he is really only confirming what Mrs Robinson herself told me during a recent telephone conference. It is appropriate that the Court has a report from a health assessor to assist with matters relevant for sentencing.

[18] I therefore direct, pursuant to s 38(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 that a report be prepared by a health assessor, such report to be from a practicing psychiatrist. I note that this is consistent with advice that the Court has received from Dr Wales. I further record that Mrs Robinson has hitherto been consulting with a Mr Furstenberg, a psychologist in the Rotorua area. She would be happy for the appointed health assessor preparing the report under s 38(1) to speak with Mr Furstenberg and to obtain any relevant information from him.

[19] I direct that the report prepared by the health assessor shall be directed to those matters referred to in s 38(1)(c) and (d) of the Criminal Procedure (Mentally Impaired Persons) Act to assist the Court in sentencing.

[20] Next, Mr Briscoe confirmed that Mrs Robinson would comply with any condition that she not communicate with anyone in writing, that is by text, email or howsoever with any person, other than counsel or medical services or the Probation Service. In particular, she should not have any contact with any of the witnesses or their employers or associated organisations. Furthermore, there would be no emailing or use of blog sites.

[21] Finally, Mr Briscoe reiterated the importance of his obtaining proper instructions. He was anxious to be in a position to do the best that he could for the prisoner on sentencing. He therefore urged the Court to impose appropriate conditions but to grant bail so that he might best be able to advance submissions on the prisoner's behalf at sentence.

Discussion

[22] What has changed since the end of trial, is that the likely sentence has become clear. The Crown memorandum on sentencing refers to a number of cases in which imprisonment was imposed for offending of this type. I agree with the submission made by Mr Hollister-Jones that the factor to be considered under s 13(3)(a) of the Bail Act, namely, the likely sentence, involves the likelihood of the prisoner receiving a sentence of imprisonment.

[23] Other factors to be considered under s 13 include the personal circumstances of the prisoner and the prisoner's immediate family. These have not changed except in a way for the worse. This is because Mr Briscoe informed me that there have been difficulties on the farm and the prisoner has been assisting her husband to deal with these matters.

[24] Another factor which I must take into account is s 13(3)(d), that is, any other consideration that the Court considers relevant. Under this category I refer to the need for the Court to be in a position where it can deal properly and effectively with all aspects at sentencing. If the prisoner were remanded in custody, it would make it difficult to provide proper instructions for counsel and the issue I have to determine is whether that factor is such as to drive me to a remand on bail. In other words, whether the prisoner has on this occasion discharged the onus on her to satisfy the Court that it is in the interests of justice that bail should be granted.

[25] By the narrowest of margins, I am going to grant bail. But the conditions will be strict. You will be released on bail and must surrender at 8am on 27 November 2009. The following conditions will apply:

- a) You are to reside at the farm at Te Whaiti Road, Hawera.
- b) There is to be an adult person at the farm at all times, without fail, to provide necessary support.
- c) You are to report three times weekly to the Hawera Police Station between the hours of 9am and 4pm, that is on Mondays, Wednesdays and Fridays.
- d) You are to have with you no children, other than your own, either in the house or in your care, custody or control at all times.
- e) You will seek whatever medical assistance, including psychiatric and psychological counselling as may be required during the course of your remand period.

- f) You are required to meet with, cooperate with and assist, the report writer from the Probation Service.
- g) You are to meet with, cooperate with and assist, the health assessor appointed by the Court pursuant to s 38(1) of the Act.
- h) You are to enter into no correspondence whatsoever with anyone, and that includes text messages, emails, letter or howsoever, other than with your counsel and medical and health services, or probation. In particular, you must not contact any witness in the case or their employer or associated organisation. There is to be no emailing or use of blog sites or websites in any way whatsoever.
- i) The prisoner's passport has been, and is to remain, surrendered. The prisoner is not to apply for any new passport or travel document of any kind.

[26] The leniency extended to you on this occasion should not be viewed, in any way, as an indication of the sentence that you might receive. This will depend on the Court's consideration both of the Crown's submissions and the submissions of your counsel. Obviously, the sentence imposed will take into account the contents of the probation report and any medical reports received in relation to you.

Stevens J