

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

CRI 2009-463-59

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| BETWEEN | WAYNE THOMAS PATTERSON Appellant |
| AND | NEW ZEALAND POLICE Respondent |

Hearing: 10 December 2009

Appearances: Jonathan Temm for Appellant
Laura Owen for Respondent

Judgment: 10 December 2009

JUDGMENT OF HARRISON J

SOLICITORS

Jonathan Temm (Rotorua) for Appellant
Gordon Pilditch (Rotorua) for Respondent

[1] Mr Wayne Patterson appeals against his conviction in the District Court at Taupo on 24 April 2009 on one charge of attempting to escape from custody and one of escaping. He pleaded guilty to both charges. On the charge of attempting to escape he was sentenced to six months imprisonment; on the charge of escaping, a term of three months imprisonment was imposed. Judge McGuire ordered that those sentences be served concurrently but cumulative on the term of imprisonment of eight years which Mr Patterson was then serving.

[2] Mr Patterson has had the benefit of representation by Mr Jonathan Temm. He has filed a succinct synopsis of submissions in support of the appeal. He submits that, first, Judge McGuire erred in law when finding that Mr Patterson's conduct at Rangipo prison constituted an attempt to escape from lawful custody; second, a miscarriage of justice occurred because Mr Patterson did not intend to enter a plea of guilty to the charge of attempting; and, third, the sentence imposed on the charge of attempted escape was disproportionately excessive.

[3] These submissions confront a fatal hurdle. Mr Patterson entered pleas of guilty to both charges. I accept Mr Temm's summary of the history of the information sheet for the charge of attempting to escape. It is apparent that from an early stage Mr Patterson intended to defend the charge. He specifically entered a plea of not guilty. However, following his escape from custody on 24 April he changed his plea on the attempt charge and entered pleas of guilty to both.

[4] In those circumstances if Mr Patterson alleged that he wrongfully or incorrectly entered pleas of guilty in the District Court, he should have applied for a rehearing in that jurisdiction: s 75 Summary Proceedings Act 1957. He should have filed a comprehensive affidavit in support with a sufficient factual foundation for an order granting leave to vacate his earlier pleas.

[5] Furthermore, Mr Patterson's appeal is well out of time. He requires leave to pursue it. Leave would only be given in the event that this Court was satisfied that there was a substantial miscarriage of justice.

[6] I should add that I am satisfied that the substance of Mr Patterson's appeal is without merit. The essence of his argument on the appeal against conviction on the charge of attempting to escape is that his conduct while in the cell at Rangipo prison was preparatory to committing the offence. Mr Temm says that it did not move further to the point where as a matter of fact and degree it was immediately or proximately connected with the offence of escaping. However, on the evidence available, and in the absence of a compelling affidavit from Mr Patterson, there was a sufficient factual foundation for concluding that the offence of attempting to escape was committed. If Mr Patterson applies for a rehearing he should know that his prospects of success are very poor.

[7] Moreover, while superficially there may appear to be a disparity in the sentences, I am satisfied that Judge McGuire carefully structured them to reflect culpability. The circumstances surrounding Mr Patterson's commission of the offence of attempting to escape show careful and sophisticated planning. By comparison, Judge McGuire found that his act of escaping from police custody while travelling to Court to appear on the attempting charge was spontaneous. Accordingly the Judge had a proper factual and principled foundation for imposing a greater sentence on the charge of attempting to escape.

[8] In these circumstances I am not satisfied, despite Mr Temm's compelling arguments this morning, that Mr Patterson has made out a ground for obtaining leave to appeal. His application is dismissed.

Rhys Harrison J