IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CRI 2010-409-000011

TROY MICHAEL HANSEN
Appellant

v

POLICE
Respondent

Hearing: 26 January 2010

Counsel: B J Meyer for Appellant
T J MacKenzie for Respondent

Judgment: 26 January 2010

JUDGMENT OF CHISHOLM J

---

[1] The appellant has pleaded guilty to indecently assaulting two 14 year old girls. He is to be sentenced on 10 February. Bail and an application for interim name suppression were refused on 20 January. This is an appeal against both those decisions. The appellant is 19 years of age. He will turn 20 on 17 March.

[2] The primary ground of appeal in relation to the refusal of bail is that the Judge failed to take into account and apply s 15 of the Bail Act 2000. In relation to the suppression appeal the primary ground of appeal is that publication of the name of the appellant is likely to lead to the identification of one or both complainants who attend the same school and were known to the appellant.

[3] On 25 October 2009 the complainants were approached by the appellant when they were walking together through the grounds of a school. He told one complainant that someone had been calling her name and after she left the scene he indecently assaulted the first complainant who managed to escape when the appellant was distracted. Meanwhile the other complainant had been looking for her friend and when the appellant came across her he indecently assaulted her before she also managed to escape.

[4] The appellant's previous record includes three counts of sexual connection with a young person aged between the years of 12 and 16. That offending, which occurred in 2007, attracted a sentence of community work and community detention.

[5] When refusing bail the Judge noted that s 13 of the Bail Act 2000 applied and that it was inevitable that a sentence of imprisonment would result. He noted that the onus was on the appellant to show why bail should be granted and concluded that such onus had not been discharged.

[6] With reference to the application for interim suppression the Judge proceeded on the basis that the presumption of openness was the primary consideration. He rejected the suggestion that publication of the appellant's name could lead to identification of one of the victims.

[7] Despite Mr Mackenzie's suggestion that the Judge might have taken s 15 into account and notwithstanding the experience of this particular Judge, there is nothing on the face of the decision to indicate that that section was taken into account. Moreover, Mr Meyer said that he could not assure this Court that the matter had been raised by him in the District Court. Under those circumstances, it would not be at all surprising if the age of the appellant (who was being remanded for sentence) had not registered with the Judge who was presiding over a busy list Court. The only safe course is to proceed on the basis that s 15 was not considered when bail was refused.

[8] In terms of s 15, there is a presumption in favour of bail unless no other course is desirable. That presumption applies whether or not the accused or offender is close to the age of 20 years.

[9] On the basis that the matter is to be approached de novo, Mr Mackenzie submitted that a number of factors justify the conclusion that remand in custody was the only desirable course: the seriousness of the offence, his previous convictions, inevitability of imprisonment, the fact that another matter (an alleged rape) is under investigation, and that sentencing is to take place on 10 February.

[10] Mr Meyer rejected those propositions. He submitted that the appellant is entitled to the protection of s 15. He emphasised that there is no record of previous offending while on bail and submitted that any concerns about reoffending can be met by conditions. Mr Meyer noted that the appellant has been at a stable address since November last year which is still available to him. In response to Mr Mackenzie's point about the new complaint, Mr Meyer argued there is no solid evidence.

[11] I am in two minds about whether a continuation of the remand in custody is the only desirable course. There can be no question that imprisonment is virtually inevitable. The factor that does weigh heavily with me is the police concern that the appellant presents a risk of re-offending. The offending for which he is to be sentenced seems to have been premeditated and is made worse by his assault of the second young lady after assaulting the first. Added to that there seems to be another complaint in the background and he has previously offended in 2007 against a young girl. To my mind there would be a real risk to the public if the appellant is granted bail.

[12] I also note that sentencing will be on 10 February. There is also strength in Mr Mackenzie's submission that having already been remanded in custody pending this appeal it would be undesirable for the appellant to be released on bail for a short time only to be taken back into custody at sentencing. I am satisfied that the remand in custody was the only desirable course. Despite the very good argument by Mr Meyer I am afraid that the appeal against the refusal to grant bail must be dismissed.

[13] As to the name suppression, Mr Mackenzie indicated that the police have made enquiries of the complainants' families who do not support name suppression.

There is also strength in his suggestion that publication of the appellant's name might lead to more complaints. Those factors support the underlying principle of openness of Court proceedings.

[14] Like the Judge, I consider that the argument in favour of suppression is relatively tenuous. No error in principle has been exposed. The appeal against refusal to grant interim name suppression is also dismissed.

Solicitors:
Corcoran French, Christchurch, for Appellant
Raymond Donnelly & Co, Christchurch, for Respondent