

SUPREME COURT OF QUEENSLAND

CITATION: *Russell v DPP (Qld)* [2004] QCA 16

PARTIES: **ZARA LEE RUSSELL**
(applicant/appellant)
v
DIRECTOR OF PUBLIC PROSECUTIONS
(QUEENSLAND)
(respondent/respondent)

FILE NO/S: Appeal No 11774 of 2003
SC No 10569 of 2003
SC No 7026 of 2003
SC No 8605 of 2003

DIVISION: Court of Appeal

PROCEEDING: Appeal from Bail Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 13 February 2004

DELIVERED AT: Brisbane

HEARING DATE: 4 February 2004

JUDGES: de Jersey CJ, Williams JA and Mackenzie J
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Appeal dismissed**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND
PROCEDURE – BAIL – REVOCATION, VARIATION,
REVIEW AND APPEAL – where the appellant is charged
with offences of dishonesty – where false identities and
documents created – where appellant absconded to New
Zealand and returned voluntarily – whether the exercise of
discretion by the trial judge to refuse bail miscarried

Scrivener v Director of Public Prosecutions [2001] QCA
454; Appeal No 9094 of 2001, 23 October 2001, considered

COUNSEL: The appellant appeared on her own behalf
R G Martin for the respondent

SOLICITORS: The appellant appeared on her own behalf
Director of Public Prosecutions (Queensland) for the
respondent

- [1] **de JERSEY CJ:** I have had the advantage of reading the reasons for judgment of Mackenzie J. I agree that, for those reasons, the appeal should be dismissed.
- [2] **WILLIAMS JA:** I agree with the reasons of Mackenzie J and with the order proposed.
- [3] **MACKENZIE J:** This is an appeal against a refusal of bail by Douglas J on 5 December 2003. The appellant was taken into custody on 4 July 2003 after arriving, in company with Kimberley Gaven at Brisbane Airport from New Zealand where she had gone in 2002, by means of a passport obtained by using someone else's identity, while on bail for three charges of fraud. Those offences for which she has now been committed to the Southport District Court and which will soon be given a trial listing, were concerned with the use of identification in the name of an acquaintance to get an 18+ identity card and to open a bank account in the same acquaintance's name. She then obtained a loan of \$60,000 against the security of a unit owned by the person, who was overseas, of which \$52,691 was paid to the bank account created by her. It is alleged she confessed to the offences. Given her substantial prior criminal record which includes other offences of dishonesty, she is likely to serve a significant term of imprisonment upon conviction.
- [4] When she arrived back in Australia she was travelling on a passport that was not hers. She was charged with 22 offences of fraud, two of stealing, one of receiving, one of breaking and entering a dwelling and committing an indictable offence and one of presenting false documents to enter Australia. She is also alleged to have provided a false surety, by pretending to be her mother, to allow Gaven to be released on bail. The fraud charges involved, amongst other things, systematic withdrawal of moneys from the account of Gaven's grandmother, obtaining fraudulent refunds from the Rental Bond Authority by using false documents, theft of other people's mail and appropriating cheques, theft of cheque books which were used to write fraudulent cheques, and social security fraud.
- [5] Bail applications were refused by Atkinson J on 28 August 2003 and Philippides J on 14 October 2003. At the hearing before Douglas J, against which the appeal lies, most of the focus of her submissions was on the fact that she was always willing to come back to Queensland to face the charges and was prepared to plead guilty to some of them. There was evidence that she had enquired of a police officer in New Zealand about returning to face the charges. She also referred to support that she had and the fact that there was an offer of a place to reside. Douglas J dismissed the application saying that he was not satisfied that the material produced amounted to a significant change of circumstances, considering the reasons why she had previously been refused bail and the risk of flight.
- [6] In her submissions in the present proceedings, she was concerned that the matters involved in the committal proceedings to be heard at Southport on 30 March 2004 could not be properly prepared while she was in custody and not legally represented. She was confident that not all matters would be committed for trial and was concerned that time she would spend in custody on remand would be longer than the length of any sentence she would receive. She was also concerned that a medical condition from which she suffers is not being treated. She disputed aspects of the material relied on in earlier applications and maintained that she had tried to return to Australia earlier to have the matters cleared up. She also relied on

assistance she would receive to get employment if released, and an offer of accommodation.

- [7] Even if the matter were treated as a renewal of an application for bail rather than an appeal, I am satisfied it would have to be refused. The issues raised by the appellant about the strength of evidence against her cannot be assessed in these proceedings. After committal, the position may be clearer. If there is a material change in circumstances, there may be a basis to apply again. At present, the risk that she would not appear when required if given bail remains high, especially in light of her ability to create false identities and documents.
- [8] The matter before the court is, in any event, an appeal, not a fresh application for bail. The nature of an appeal against a refusal of bail is discussed in *Scrivener v DPP* [2001] QCA 454. It is an appeal by way of rehearing. Such an appeal ordinarily involves a rehearing on the record. The decision appealed from is one involving an exercise of discretion and the principles applying to setting aside a discretionary decision are relevant.
- [9] In my view the applicant has not established that there is anything that leads to the conclusion that the exercise of the discretion to refuse bail by Douglas J miscarried. I would dismiss the appeal.