[2001] QCA 52

COURT OF APPEAL

de JERSEY CJ
WILLIAMS JA
AMBROSE J

CA No 1461 of 2001

DENNIS DONALD FOUNTAIN Appellant (Applicant)

and

DIRECTOR OF PUBLIC PROSECUTIONS Respondent (Defendant)

BRISBANE

..DATE 21/02/2001

JUDGMENT

THE CHIEF JUSTICE: The appellant is Mr Dennis Donald Fountain. He is charged with a series of offences allegedly committed in the year 2000 in relation broadly to the company Herron Pharmaceuticals Pty Ltd.

They are extortion, intentional contamination of goods, attempted murder, maliciously administering poison with intent to harm and fraud. He was charged with the offences on 19 December 2000. A Magistrate refused bail on the ground that the applicant might if released reoffend.

On 16 January this year, Justice Fryberg again refused bail. His Honour noted that the appellant had no prior criminal history, that he had an established connection with the State of Queensland and that his medical difficulties would inhibit his departing the jurisdiction. He was conscious that the applicant before him had suggested a condition that he "keep house" if granted bail.

His Honour also noted the appellant's concession that a prima facie case had been established against him. Refusing bail, the learned Judge took the view however that he could not exclude the prospect of the appellant's committing other offences relating to the making of threats and posting of letters if released, or obstructing the course of justice.

The Crown case against the appellant although presently unanswered, and the appellant has at this stage no obligation to answer it in any way, appears to be a strong prima facie case. While there are substantial circumstances which would ordinarily

favour a grant of bail, the absence of prior convictions, the link with the jurisdiction, maturity, health problems and so on, the seriousness of the offences charged and the apparent weight of the Crown case should cause a Court to be circumspect. If convicted of these offences, the appellant will face a very lengthy term of imprisonment.

The question now arising on appeal is whether his Honour erred in principle or in fact or whether indeed new circumstances may have arisen since his judgment warranting a different approach. There is no new circumstance.

I am not persuaded that his Honour erred in principle. Additionally, his Honour's findings of fact were open and it is no part of this Court's legitimate function to interpose its own should they differ.

Counsel for the appellant pointed particularly to the learned Judge's reliance for his jurisdiction on section 10 of the Bail Act rather than section 9. Section 9 confirms a prima facie entitlement to bail. His Honour's reliance may be considered at odds with Hughes [1983] 1 Queensland Reports 92-98 and Maher [1986] 1 Queensland Reports 303-309. But the point is of no more than academic interest. The Judge's declining to grant bail was based on the applicability of risks referred to in section 16 of the Bail Act. Their existence would necessitate refusing bail whether the Court worked for its jurisdiction from section 9 or section 10.

The learned Judge concluded that there was an unacceptable risk of

the appellant's committing, if released, offences in relation to the making of threats and posting letters. Assessing the acceptability or unacceptability of that risk, he had regard to the possible consequences of such offences.

Mr Glynn QC, who appeared for the appellant, criticised that approach, but it was in my view a permissible approach and there is nothing in McCasker [1997] QCA 455 inconsistent with it. It would be rare that in assessing the acceptability or otherwise of a risk for purposes of section 16 of the Bail Act, the nature of the possible offence would not be considered in all its ramifications, including of course its consequences.

The learned Judge considered the risk of the appellant's reoffending was in fact low, but that the risk was rendered unacceptable by the serious economic consequences in particular which could flow from any such reoffending. I do not accept the appellant's counsel's submission critical of that approach, for reasons just expressed.

The question for this Court on appeal is whether the learned Judge erred in principle, and whether his factual conclusions were reasonably open. We are not rehearing the application for bail which his Honour determined. No error having been established, and his Honour's approach being open, the appeal should in my view be dismissed.

WILLIAMS JA: I agree with what has been said by the Chief Justice. There is however one matter on which I would add some

observations.

Counsel for the prosecution before the Judge at first instance submitted that the term "person" in section 16(1) of the Bail Act included "corporation" and that in consequence the Court was entitled to have regard to the welfare of the corporations the subject of the extortion threats when considering the application for bail.

The learned Judge at first instance expressed his preliminary view that that argument was not correct, saying that it seemed to him that the term "person" was intended to refer only to natural persons. In my view, that preliminary view is unsustainable. The term "person" is defined in the Acts Interpretation Act as including a corporation and in my view it should carry that meaning when used in section 16(1). The term "welfare" is also broad enough to encompass the economic welfare of a corporation.

In my view, it would be permissible in the circumstances of this case to consider the risk to the corporations in question of continued conduct by the appellant of the type in question. For those, and the reasons given by the Chief Justice, I agree that the appeal should be dismissed.

THE CHIEF JUSTICE: I am grateful to Justice Williams for those additional observations, with which I agree.

AMBROSE J: I agree with the observations of the Chief Justice and of Justice Williams.

THE CHIEF JUSTICE: The appeal is dismissed.
