



L-110
[2002] QSC 357

Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Applicaton No 519 of 2002

RE AN APPLICATION FOR BAIL BY KELLY ANNE PROFKE

CAIRNS

..DATE 18/10/2002

JUDGMENT

No corrected
[Signature]

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application for bail by Kelly Anne Profke who is in custody on remand on 29 charges of obtaining goods or services dishonestly. The circumstances of each of those offences rather indicates to me that there is a strong prosecution case.

Many of the instances relate to the applicant allegedly using credit cards belonging to other persons. In some instances the credit cards were drawn on the Bank of Ireland and other cases of Bank of England. It does not appear in the applicant's material that she has any association with such banks or even indeed such countries.

The applicant has a lengthy criminal record including many offences of dishonesty, particularly in New South Wales where she appears to have spent some time. She is only 30 years of age, and to have a record of the kind that she has, particularly with many offences of dishonesty, is not a particularly good sign. It indicates that there is a serious risk of the applicant offending again if she is released in her present circumstances.

In addition, the applicant has a long history of non-appearance at Court to answer bail, and some instances in her affidavit she has given an explanation for this. On some occasions she, in her affidavit, says she was in hospital seeking medical treatment for stomach tumours, or in one instance a kidney infection.

She mentions that on another occasion when she failed to appear it was a matter of miscommunication between her and her solicitor or between her solicitor and the Court. That particularly relates to some recent and unresolved offences which are pending in New South Wales, and in respect of which a warrant was issued by the New South Wales Court for her arrest.

The history also shows that on more than one occasion the plaintiff was convicted in her absence at Court. One such occasion related to a series of offences which are now subject to the Criminal Court of Appeal in New South Wales to have the conviction set aside. Pending the hearing of that appeal the Supreme Court of New South Wales granted the appellant bail on the 13th of May 2002.

Her affidavit, however, refers to her being required to appear at the local Court in Leeton and to the District Court of Wollongong on different dates. That suggests to me that there are concurrent proceedings in New South Wales additional to the proceeding in respect of which the appeal was lodged. If the plaintiff was granted bail in respect of those other proceedings in New South Wales, it is clear that she is in breach of her bail conditions in respect of those.

If that is the case, then the question arises whether by reason of her being arrested for the offences committed in Queensland, the applicant is in a show cause position pursuant to section 16 of the Bail Act. That is the question which I

do not feel any need to resolve. Whether it is for the applicant to show cause that she ought to be granted bail, or whether the onus is on the prosecution to show facts which show that the applicant is at risk of re-offending or risk of not responding to bail conditions, then the evidence amply demonstrates that risk is a high one and on both counts.

The most significant argument raised on the behalf of the applicant was that she has not yet been committed for these 29 offences. But at best, she could not be dealt with by the District Court in Mackay before February 2003, and that given all the circumstances and the background that she might therefore be by her remand to be serving a term of imprisonment beyond the likely penalty.

I am informed that the committal is likely to be held next week in Mackay, and that would mean that the applicant, if she remains in remand, is almost certainly to be dealt with in February 2003. Might even be possible, if she were to plead guilty, that she would be dealt with in November but at the very worst I will work on the basis that her trial will be disposed of in February 2003.

In all the circumstances of the case, particularly having regard to the applicant's record of re-offending, and her record of not answering bail, I must refuse this application.

There was one further matter that I meant to mention, and that is it was urged upon me that there was some, if not excuse,

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then explanation for the plaintiff not answering her bail conditions in relation to the New South Wales proceedings it is that in addition to having the health problems to which I have made passing reference, the applicant also has a concern for her two children. The elder was a child of an early relationship, and the second of a relationship with her de facto husband who removed the children from New South Wales and is now living in Cairns.

When these Queensland offences were alleged to have been committed, the applicant was on a journey via Brisbane and the Whitsunday area to Cairns. The purpose of her journey was for her to be reunited with her children in respect of whom she has some concerns about their wellbeing. I will mention that now because I have taken that explanation into account, but I do not find it sufficiently compelling to change my view that the risks of the applicant not appearing and re-offending are too high to admit her to bail in these circumstances. The application is refused.
