

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

JP APPEAL 4/11

BETWEEN

**Deputy Solicitor-General of
Rarotonga, Cook Islands**

Appellant

AND

**MICHAEL BROWN, of
Rarotonga, Cook Islands**

Respondent

Hearing: 12 December 2011

Counsel: Mr Mitchell for the Appellant
Mr Petero for the Respondent

Judgment: 16 December 2011

JUDGMENT OF GRICE J

- (1) The Appellant, Applicant, is seeking an extension of time to file an application to appeal against a decision of Justice of the Peace John Kenning. The decision was made on September 2011. The application was filed 14 days out of time.
- (2) The grounds put forward in support of the application for extension of time are that the Respondent consents to the application for extension of time, there is no prejudice to the Respondent by the late filing and the delay was caused by the departure of the solicitor general and related matters.
- (3) The main ground for appeal is that the Justice of the Peace erred in his decision by applying the wrong standard of proof, that is, he applied the standard of “the slightest chink of doubt”. This is a higher standard than beyond reasonable doubt, therefore the Respondent was acquitted based on that higher standard and the matter should be remitted for re-hearing.

(4)

The general right of appeal is under section 76 of the Judicature Act which provides section 76(2) that the notice of appeal should be filed in Court within 21 days after the decision was given. The Court may extend the time prescribed for appealing. This is a matter within the discretion of the Court.

Generally the Court will consider the overall interests of justice with particular reference to:

- the reasons for the failure to appeal within time
- the length of delay
- prejudice
- whether there are issues of public importance
- merits

See:

(Probst v Mason, Venning J, 2 November 2011. CIV-2011-488-00652. High Court Whangarei)

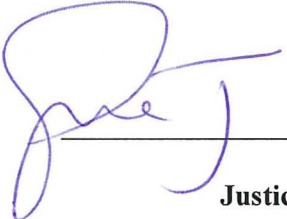
In this case the Respondent consents to the extension of time, the granting of the appeal and remission back to the JP for hearing. Therefore, there is no issue prejudice. The parties are agreed on the merits of allowing the appeal. The Respondent also accepts the merits of the appeal. The reasons for the delay and the length are not issues of concern to the Respondent. The consent of the Respondent is an important factor in granting this extension and allowing the appeal.

(6)

The parties seek an order that the matter be remitted back to the Justice of the Peace for a re-hearing. Accordingly I allow the leave to extend time for appeal and allow the appeal. The judgment is quashed and I order a new trial in front of a Justice of the Peace pursuant to section 80(1) of the Judicature Act.

(7)

In the circumstances there will be no order as to costs.



Justice Grice