

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

CR MISC. 42/2021
(CR 114-115, 205, 460, 470, 472/2021
110-111, 461/2021
112-113, 204, 463/2021
108-109, 462/2021 & 469/2021)

POLICE

v

**PHILIP WALTER MONTGOMERY STRICKLAND
RUTRIL MATAMARU ENOKA
TAMARI TEREMOANA KAIVANANGA
TIPINE TETAVA TAMA
CHELSIE MORGAN NAPA**

Date of Zoom hearing: 29 October 2021

Appearances: Ms A Maxwell-Scott and Ms J Crawford for police
Mr N George for Strickland
Mr M Short for Enoka, Tetava and Napa
Ms L Rokoika for Kaivananga

Judgment: 2 November 2021

**JUDGMENT OF HUGH WILLIAMS, CJ
(re. Strickland Bail Application dated 19 October 2021)**

[0198.dss]

Summary of present position

[1] As detailed in previous judgments and minutes concerning Criminal callovers and applications for bail made by Mr Strickland and the other above named accused¹, all of whom are said to be his associates, Mr Strickland is facing numerous charges of offering to sell or supply a class C controlled drug, namely cannabis, and money laundering. Up until recently, all the offending was alleged to have occurred during the 2019 year but, as will be noted later,

¹ The contents of which are incorporated in this judgment.

Mr Strickland was charged with later alleged offending and he, and, now, Ms Napa, with further later offending again. Mr Strickland was arrested and interviewed under caution in December 2019 but was not charged until 28 January 2021 with offending that, at that stage, ended in December 2019. However, he was then charged with further drug dealing from December 2019 to February 2021.

[2] Previous applications for bail having been dismissed or adjourned prior to 26 March 2021, the applications were granted on that date on strict conditions including one which said that Mr Strickland was “not to own, possess or use” a mobile phone, plus a curfew. Those conditions were imposed to lessen the chance of further offending on the part of Mr Strickland and his fellow accused but bail was allowed principally because of the time which would inevitably elapse before a fixture could be allocated to the forecast 2-3 week trial.

[3] Between 26 March 2021 and the date of the latest callover and bail hearing on 29 October 2021, variations in the bail conditions have been made by consent to permit various accused to undertake their employment and other activities, and negotiations over the future of their involvement in the trial have occurred between the Crown and counsel for the four accused other than Mr Strickland.

[4] During that period, a further development has been that the accused Ms Napa has been arrested and charged that between 1 June – 17 August 2021 she offered to sell cannabis, the Crown alleging that she did that as an associate of Mr Strickland and at his initiative. She, too, was admitted to bail on 27 September 2021 on conditions, the principal one of which was her non-attendance at her place of work, the location from which, the Crown alleges, she committed the offences with which she is charged.

[5] Negotiations between counsel for the accused other than Mr Strickland and the Crown are expected to reach the point by the next Criminal callover – expected before the end of 2021 – when they will be expected to enter pleas, one way or the other, to the charges they face.

[6] However, the re-imposed strict Covid19 travel and quarantine arrangements are such that, regrettably, a fixture for the trial remains distant.

Mr Strickland's Bail application dated 19 October 2021

[7] Mr Strickland was re-arrested on 22 September 2021 following execution of a search warrant dated 16 September 2021 which, the Crown alleges, shows that, while on bail, he has been drug dealing between 21 May – 11 August 2021 as evidenced by text messages said to involve Mr Strickland demonstrating evidence of his dealing in drugs over that period.

[8] On 19 October 2021 Mr George, counsel for Mr Strickland, filed an application for his client's release on bail. This judgment deals with that application.

[9] The Crown accepts that, although the search warrant extended to mobile phone with the number 71479 and any other mobile phones belonging to the accused and the sim cards for the same, the only phone seized by the police had no sim card.

[10] Ms Maxwell-Scott, for the Crown, said the Vodafone evidence shows that number 71479 was activated on 7 April 2021 to Mr Strickland's mother and, in support of the Crown submission that there is evidence Mr Strickland has been using that mobile phone, and possibly others, during the period he had been on bail, she put in evidence a summary of the texts from 71479. They begin on 25 May 2021 and run through to 11 August 2021. Some use the name "Walter", some refer to Mr Strickland's home address or are messages to his fiancé, some the Crown alleges refer to drugs in code.

[11] Ms Maxwell-Scott said there are also numerous messages to number 51275 which the Crown alleges is held by Mr Strickland's fiancé, whom he intends to marry on 19 December 2021.

[12] Some of the locations mentioned in the messages are, Ms Maxwell-Scott said, likely to have resulted in meetings at the house to which Mr Strickland was curfewed with the text messages being at all hours of the day and night.

[13] Analysis of the texts is continuing with further production orders likely and investigations ongoing, something which, the Crown alleges, would be jeopardised should Mr Strickland be again admitted to bail.

[14] Overall, the Crown submissions are that the evidence which has emerged since Mr Strickland was originally granted bail means not just that he would be likely to breach bail should it be granted again but that he is also likely to continue to commit drug dealing offences.

[15] Mr George, while accepting Mr Strickland lives with his parents and his fiancé, submitted that the evidence currently available against his client was unlikely to show either offending on bail or result in his conviction on the charges he faces.

[16] While accepting that s 74(2) of the Narcotics and Misuse of Drugs Act 2004 says that when bail is granted to an accused facing drug dealing charges on conditions requiring the accused's personal appearance or "any other condition that appears ... to be necessary or desirable in the interests of justice or for the prevention of crime", the subsection says the Judge "shall not require any surety to be found in respect of that condition". Mr George submitted that s 74(2) does not debar a bail condition requiring a surety but makes such a matter of discretion. The application being able to be decided on other grounds, no definitive ruling on that submission is necessary

[17] That notwithstanding, Mr Strickland's parents have both filed affidavits offering to sign a bail surety bond for \$10,000 to ensure their son's compliance with any bail conditions imposed.

[18] Mr George also, naturally, relied on presumption of innocence and put forward some personal submissions relating to the accused which, he submitted, should be taken into account in relation to the bail application.

[19] As an aside at this point, Mr George submitted that some of the material uplifted on execution of the search warrant and some of the money seized on that occasion went beyond the provisions of the warrant and was privileged. In that regard, it is noted that Ms Maxwell-Scott undertook to review the material obtained by the police on execution of the search warrant promptly and return any money and other material which the Crown accepts are not probative of any of the charges Mr Strickland faces, with any disputed items remaining being the subject of a pre-trial application.

Discussion and decision

[20] Sections 73 and 74 of the Narcotics and Misuse of Drugs Act 2004 debar the granting of bail to a person charged with a drug dealing offence other than by a Judge's order with any bail granted to such a person needing to be likely to result in the defendant's personal appearance or "any other condition that appears ... to be necessary or desirable in the interests of justice or for the prevention of crime".

[21] Further, s 8 of the Bail Act 2000 (NZ) – the principles of which are accepted as relevant to the grant of bail in the Cook Islands – requires Courts, in deciding whether there is "just cause" for an accused to be remanded in custody, to consider the risk of an accused offending while on bail, the seriousness of the offences charged, the strength of the evidence, the severity of any likely punishment, any history of offending while on bail, and the likely length of time until trial.

[22] Applying those principles to Mr Strickland's latest bail application and focussing on the "prevention of crime", it is apparent that the Crown now have probative evidence of Mr Strickland continuing to engage in drug dealing offending whilst on bail for drug dealing offending.

[23] True, the Crown has what may turn out to be significant evidential hurdles to surmount and it may also turn out to be the case that Mr George is able to dispel the inferences of criminal conduct which may in due course be open for the jury to take in respect of some of the texts and other evidence the Crown puts before them but, in terms of the time-honoured metaphor almost certainly to be used in the summing up to the jury on circumstantial evidence, the question may turn out to be the cumulative weight of the "strands in the rope not links in the chain", of the texts and other evidence the jury is left to consider. Seen from the present vantage point, the cumulative effect of those strands of evidence does not seem insubstantial.

[24] With more direct relevance to ss 73 and 74 and the criteria relating to the granting of bail for those accused of drug dealing, the evidence shows a risk that Mr Strickland will continue to engage in drug dealing should he be granted bail on the raft of serious offences he now faces, such that it would not fulfil the statutory purpose of the prevention of crime for him to be again granted bail.

[25] The major consideration against that conclusion is the time he will inevitably be kept in custody before trial. That is most unfortunate but in the circumstances where he has allegedly committed serious offences while on bail and having regard to the current worldwide pandemic, there is no other appropriate outcome.

[26] Mr Strickland's further application for bail dated 19 October 2021 is accordingly dismissed.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ