

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

**CR MISC. 114-115/2021  
205/21, 460/21  
470/21, 472/21**

**POLICE**

v

**PHILIP WALTER MONTGOMERY STRICKLAND**

Date of hearing: 18 March 2022  
Counsel: Ms A Maxwell-Scott, for the Crown  
Mr N George, for the Defendant  
Oral Judgment: 18 March 2022

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**ORAL JUDGMENT OF HUGH WILLIAMS, CJ  
(re. Bail)**

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[10:51:45]

[1] This judgment deals with a renewed application by Mr Philip Walter Montgomery Strickland for bail, the latest application being filed by Mr George, his counsel, on 15 March 2022.

[2] Bail for Mr Strickland has been considered on a number of occasions during the currency of this matter. The principal judgment relating to Mr Strickland's being in custody is the judgment of 2 November 2021, following a hearing some three days previously.

[3] The present circumstances are now sufficiently similar to the matters discussed in that judgment that rather than repeat what was said on that occasion it is helpful for the purposes of this judgment simply to re-record some of the observations made on that occasion:

[1] As detailed in previous judgments and minutes concerning Criminal callovers and applications for bail made by Mr Strickland and the other above named accused<sup>1</sup>, 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, 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.

...

[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.

and the passage in the same judgment which specifically relates to Mr Strickland’s bail application of 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.

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<sup>1</sup> The contents of which are incorporated in this judgment.

[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.

...

[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.

[4] Since that time Mr Strickland has remained in custody but Mr George now re-applies for bail, making the point that his client has now been in custody for about six months since his re-arrest on 22 September 2021.

[5] Mr George makes the point that there have been no adverse reports about his client's behaviour in prison and, in the terms of Mr George's application, Mr Strickland is "now terrified about going near a cell phone" though he apparently intends vigorously to contest

the Crown allegation that he re-offended whilst on bail previously, the alleged reoffending which led to his further arrest.

[6] Mr George also relies on personal circumstances for Mr Strickland and his parents, including the cancellation of Mr Strickland's wedding in December 2021 and the fact that his father is suffering from the absence of the defendant in working the family's plantation.

[7] Surety bonds are offered, but that issue was dealt with in the 2 November 2021 judgment and need not be referred to further.

[8] Whilst it is accepted that Mr Strickland's family is undergoing privation as a result of his continued detention in custody, that is not a matter which of itself greatly inclines towards the grant of bail.

[9] What, however, does assist Mr Strickland is the time he has spent in custody and the time, if bail is declined, he will continue to spend in custody before the trial can occur.

[10] At the present time the trial estimate still remains at 2 to 3 weeks but there are developments underway in relation to at least two of Mr Strickland's co-accused who have already pleaded guilty to various charges and await sentencing. Those developments may potentially affect the duration of trial such that it might be possible to contain the trial within a fortnight's duration.

[11] There will be a High Court session of two weeks towards the end of August 2022 and it may turn out to be possible that Mr Strickland's trial can occur during those sessions.

[12] In light of all of that, there is no sufficient new material put before the Court to warrant the grant of bail. The same circumstances effectively operate as operated when the 2 November 2021 judgment was delivered.

[13] The one factor which remains of significant importance is the length of time to when the trial might be heard.

[14] In view of the fact that there is a chance that the trial might be heard in August this year, the application for bail will be declined, but the matter will be reviewed at the next criminal callover and if it proves to be the case at that point that further significant delays in holding the trial beyond August 2022 seem to be the situation the question of bail will be more positively reviewed so that Mr Strickland's incarceration is not such as will jeopardise him depending on the result of the trial.

[15] For the present however, there is insufficient new material to justify a grant of bail, the circumstances outlined in the previous judgment still obtain and the application for bail 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**