

POLICE

V

IOVANE LANTATULE PAERAU

Date of Hearing: 20 March 2019
Appearances: Mr N George for Applicant
Ms K Bell for Respondent
Date of this Judgment: 20 March 2019

JUDGMENT OF HUGH WILLIAMS, CJ
(re. Bail application)

[1:26:55]

[1] This judgment concerns an application by the accused Iovane Paerau for bail pending the resolution of the charges that he faces. At the present time the evidence shows that Mr Paerau returned to the Cook Islands in March 2018 but then on 13 November 2018 was arrested on a number of counts and now faces charges of seven burglaries, arson, resisting the police, possession of an unregistered firearm, and possession of cannabis seeds.

[2] The current position is that an application to declare admissible the results of a search warrant executed on 13 November 2018 is likely to be determinative of the charges. That is accepted by the Crown. That matter will be dealt with by Justice Potter in the week beginning 20 May 2019 and if the Crown is successful in obtaining an order for admissibility of the items found pursuant to the execution of the warrant then Mr Paerau will go to trial, probably in the July 2019 sessions.

[3] Because any question of Mr Paerau's custody or bail will need to be reconsidered by Justice Potter following determination of the admissibility application, this application today comes down to whether Mr Paerau should be admitted to bail between now and the hearing of the admissibility application.

[4] Mr Paerau has been in custody since his arrest on 13 November 2018 and has applied on a number of occasions to the Justices of the Peace for bail. All those applications have been declined. And on 21 December 2018 an appeal against the most recent of those applications was also dismissed.

[5] In dismissing the appeal on that occasion, as the Judge presiding, there was a review of the Justice's decision declining bail and it was held that the salient questions which were considered by the JP were the seriousness of the charges which Mr Paerau faces, secondly his list of convictions for roughly similar offences in Australia and thirdly, doubts as to compliance with the bail conditions and the possibility of reoffending or decamping.

[6] All those circumstances remain relevant concerning the present application.

[7] It is certainly the case that Mr Paerau faces a considerable number of charges which related to offences alleged to have been committed in the relatively short period between his return to the Cook Islands and his arrest. However, as Mr George rightly points out, Mr Paerau is entitled to the presumption of innocence in relation to all those charges and accordingly the sheer number and seriousness of those charges is not a matter which can be accorded great weight in relation to whether or not he should be granted bail.

[8] The second issue is Mr Paerau's convictions in Australia. As noted in the judgment concerning his appeal, whilst some of the Australian offences are not directly comparable with the offences with which Mr Paerau is charged, there is certainly a very large number of convictions for Australian offending – something over a hundred appear to be listed – and they involve a wide spectrum of dishonest behaviour. Those convictions remain a motivating factor in relation to the present bail application.

[9] The third issue is whether Mr Paerau is likely to comply with any bail conditions or might leave the country. Those are matters which, if bail is granted, can simply be taken care of by the imposition of relevant conditions.

[10] In support of this application Mr George firmly submitted that the Crown acknowledges that the legality or otherwise of the search warrant may be in doubt in the sense that it was not directed to the accused and that accordingly the charges that Mr Paerau faces are likely to be dismissed because of what might become the invalid execution of the search warrant. In

particular Mr George stressed that the obstruction of justice charge was wholly based on Mr Paerau's objection at the time to the search warrant.

[11] Ms Bell for the Crown accepts that the legality of the search warrant is challengeable but submits that in the exercise of discretion which must follow, were that the conclusion the Judge reached about legality, the public interest in the administration of justice would incline the Judge to hold the evidence obtained through the search warrant admissible against Mr Paerau at trial.

[12] While the Crown's acknowledgment of the position concerning the search warrant is a factor in pointing towards the granting of bail to Mr Paerau at this juncture, the exercise of discretion is something to which Justice Potter will obviously give deep consideration if she holds the search warrant invalidly obtained. Those however are issues which the Judge will need to review when she deals with the pre-trial application.

[13] For the present the situation has not markedly changed since Mr Paerau's appeal was dismissed in December last and the only factor which would give additional impetus to granting his application for bail is, of course, that he has been in custody since November last year and will, if his application for bail is dismissed, be in custody for another couple of months before the matter can be reviewed.

[14] It has already been held that the number of charges Mr Paerau faces is not a potent factor in considering his application for bail, but the principal hurdle his application faces – one which Mr George did not confront in submissions – is the effect on the discretionary grant of bail of the numerous Australian convictions involving offences which are roughly comparable to some of those which he faces in this country.

[15] Weighing all that up one way and the other, the appropriate conclusion to be reached is that no case has been made out for a grant of bail at this stage and Mr Paerau should remain in custody to prevent the possibility of reoffending until such time as Justice Potter is able to review all the circumstances before her on the pre-trial application. At that point, depending on the result of that application. If the charges remain on foot she will also need to consider whether Mr Paerau should then be admitted to bail.

[16] For the present however the conclusion is that no case has been made out for bail and Mr Paerau is accordingly remanded in custody until the hearing of the pre-trial application in the week beginning 20 May 2019.

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