

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

5 JUDGE C ARMITAGE

PARRAMATTA: WEDNESDAY 9 JUNE 2010

10 **2009/59266 - R v John WILSON**

PROCEEDINGS AFTER CONVICTION

Mr Rowling for the Crown
Offender appeared in person

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20 HIS HONOUR: Mr Wilson and Mr Crown I propose to as present advised
subject to argument to the contrary I am minded to give Mr Wilson bail pending
sentence. I just thought I'd inform you of my attitude Mr Crown so that if you
want add submissions to the contrary, you may do so, and I'll listen to them
and rule accordingly. That's my current disposition.

25 Another thing I want to do - I say this to both of you - is to have some - two -
medical reports obtained by the Probation and Parole Service. Mr Wilson, is it
true that you've had a heart attack and a stroke? The reason I ask Mr Wilson
is that on occasions the fact that people have ill health problems may justify a
lesser sentence being passed on them of either a shorter period of
30 imprisonment or alternatively a suspended sentence or a bond in lieu of
imprisonment. So it's important Mr Wilson that I know your state of health.

35 What I propose to do is have you assessed so I just want to know if you wish
to tell me are there any health problems that you have at the present time that
you say should mean that a less severe sentence is passed upon you. If you
don't wish to say anything as I gather is the case, so be it. But Mr Wilson now
is your opportunity if you want to tell me about matters that are compassionate
matters that may affect what you receive. Do you wish to say anything? I
suspect that Mr Wilson, in principle, does not wish to take part in this
40 sentencing hearing since he has not replied.

45 That should not deter me Mr Crown I think from referring to Mr Wilson for
assessments and I have to say that if the Probation and Parole Service
arrange assessments for him, health assessments, his attendance would be
compulsory.

Do you wish to say anything on the question of bail?

ROWLING: Yes, your Honour, I tender--

50 HIS HONOUR: Yes, the antecedents--

ROWLING: The antecedents including some antecedents relating to the Federal Police Force and also a Corrective Services statement which shows how long the accused spent in custody in relation to this matter. We say on the authority of Veen amongst other things--

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HIS HONOUR: Just a moment the antecedents is exhibit AA on sentence and the Corrective Service statement is exhibit BB on sentence.

ROWLING: Copies have been handed to the accused (as said) your Honour.

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HIS HONOUR: Do you want to say anything Mr Wilson as to why these documents should not be tendered? In the absence of a reply those documents will be exhibit AA and exhibit BB.

15 ROWLING: We say your Honour that the objective circumstances of this offence, together with the--

HIS HONOUR: I have viewed the antecedents on an earlier occasion you may remember Mr Crown, and I'm aware of them because they came up in the course of an argument during the trial. The jury of course did not see them.

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ROWLING: We say that the antecedents show a continuing course of disobedience to the law.

25 HIS HONOUR: Yes.

ROWLING: Your Honour, will see from the AFP report there are very heavy fines for failing to do such things as furnish reports. Your Honour, will see that there are a large number of occasions, sometimes twice in one day when the accused has been charged and convicted with various driving offences, for instance driving without a licence and driving an unregistered and unlicensed vehicle.

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HIS HONOUR: Yes.

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ROWLING: We say that's a continuing course of disobedience to the law, and in accordance with Veen requires a heavier sentence to deal with personal deterrence and protection of the public. I have a copy for your Honour. A copy of Veen has been sent down the line to Mr Wilson. We say that this requires a full time custodial sentence and it ought to start today.

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HIS HONOUR: Yes, thank you Mr Crown. Exhibit AA is therefore antecedents and bail report. So Mr Crown if I read it correctly there's a sentence for contempt of court which resulted in custody for what would appear to be one day.

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ROWLING: That was imposed I think by Justice Rothman and there's also I think a lengthier sentence of imprisonment for contempt of court which appears on the prison record, but I think it's a two year sentence of which he served some months. Your Honour, will also see that he also served about six

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weeks bail refused in relation to these offences.

HIS HONOUR: Yes, I see, thank you Mr Crown.

5 ROWLING: There is one other matter outstanding, there is a Local Court matter of resist arrest. I'm not sure if the s 166 Certificate has been filed, I haven't seen one, I will make enquiries.

10 HIS HONOUR: Unless it's the subject of a plea of guilty.

ROWLING: Precisely, your Honour.

15 HIS HONOUR: If it's the subject of a plea of not guilty then of course it has to be dealt with in the usual way.

ROWLING: Yes, your Honour.

20 HIS HONOUR: Mr Crown, the position is this I have the profoundest misgivings about the accused's mental and emotional state judging by his behaviour during the trial and as depicted on videos that were shown during the trial on other occasions. There are well known principles embodied in such cases as Hemsley, Engott(?), Scoimillio and many others which say that to put it bluntly mental illness should be taken into account on sentence.

25 There are three ways in Hemsley in which it can be taken into account in mitigation. There is of course one respect in Hemsley in which it could be taken into account in imposing more severe sentencing. The overall principles however tend towards mitigation rather than increase in sentence. The principles are obviously based on the person concerned being a less
30 appropriate vehicle - well general deterrence then would otherwise be the case, individual deterrence of course is a different matter but even that needs to be considered in the light of mental illness.

35 So far as possible persons who's offending has been the consequence of their mental illness ought be treated not totally differently, but in principle unless their mental illness is such as to render them an increased danger to the public, more leniently than others. I know nothing apart from what Dr Allnutt said near the commencement of the trial about this man's mental state, and all that Dr Allnutt was asked to opine about was the man's fitness to plea but in
40 the very limited criteria in Press's case in Victoria, which has been followed on many occasions in New South Wales. That is a different question entirely from whether or not this man's mental or emotional state contributed to his offending.

45 If I do not grant bail the difficulties in having him seen by appropriate specialists in custody are multiplied, as we all know.

ROWLING: Can I - I'm sorry I thought, your Honour, had finished.

50 HIS HONOUR: I just want to indicate a prima facie view, Mr Crown, and then

you address your nodding to it. His antecedents is overwhelmingly obvious, start recently, he was a man born on 26 June, 1942, and he has not one single offence to his name until, as I read his antecedents, 19 June 2008. I beg your pardon there are offences committed in October 2007 which - I beg your
5 pardon the first offence seems to be 8 May 2006 "Drive on road while licence suspended". There are repeated traffic offences since that time of similar type. I don't detect a more serious offence of drive while disqualified they all seem to relate to driving while suspended--

10 ROWLING: 19 June 2008, on page 1.

HIS HONOUR: I beg your pardon there is one drive while disqualified, that's true, and there is attempt to possess proscribed restricted substance in 2008 which is more serious. Then we have things like "Remain on enclosed
15 premises"; "False representation resulting in police investigation"; "Destroy or damage property"; "Drive on road while suspended"; "Drive a uninsured and unregistered motor vehicle"; "Drive while licence cancelled", on a number of occasions.

20 It is true that these represent an ongoing attitude of disobedience to the law but none of them, with the possible exception of the "Drive while Disqualified" and "Possess or attempt to possess restricted substance", are inherently serious offences normally warranting imprisonment, they start remarkably late
25 in this man's life which strongly suggests a problem besetting him perhaps of the type which he displayed during the trial. I'm no expert I'm no diagnostician I've no idea what anybody will say about that but I have my suspicions.

I can see the Crown's point in suggesting to me that Veen has some application and in due course it may, but Mr Crown I really think I need to know
30 this man's medical condition in every way before I sentence and I see serious difficulties about getting appropriate reports if I place him in custody today. I can put him on bail on a number of strict conditions one of which of course will be that he doesn't approach the premises, the subject of the present offences. If he breaches that he breaches his bail and he'll find himself in custody.

35 ROWLING: We will in due time, your Honour, be relying on the fourth limb in Hemsley.

40 HIS HONOUR: Yes.

ROWLING: We will say that there is evidence before your Honour, both in the evidence he gave in the trial, and from the criminal record of what we would call future dangerousness, if your Honour is to find that the emotional and psychiatric problems to which your Honour has alluded, exist.

45 HIS HONOUR: Mr Crown that's the precise reason why I need expert evidence because it may be that that situation does exist, but if I can't find that it exists without expert evidence. I want the whole matter examined.

50 ROWLING: This is not a prisoner who has indicated any acceptance of any

5 problem. So far as there may be a problem he has denied it, in that he has denied any problem for instance with Mercury. He says it's safe providing you know how to use it. This is not a prisoner about whom your Honour can have any confidence that an order that he attend for a medical, psychiatric, or psychological consultation would be obeyed.

HIS HONOUR: What if I make them bail conditions?

10 ROWLING: Still, your Honour, doesn't have any confidence at this stage that it would be complied with.

HIS HONOUR: Bluntly, Mr Crown, doesn't the remedy then lie in revocation of his bail?

15 ROWLING: Yes, your Honour, but if it's inevitable, I can't say it's inevitable we say close to, your Honour, has already seen before your eyes in the last half hour a withdrawal from these proceedings. I think I saw that certain exhibits, the prisoner's copy of an exhibit being thrown to the floor. I don't know if your Honour saw that but I did.

20 HIS HONOUR: No, I didn't see that.

25 ROWLING: If it did happen then it's a matter of some seriousness. Your Honour, can have no confidence whatsoever that this prisoner will attend any medical or other report that your Honour directs. Your Honour, can have no confidence that this prisoner would attend for a pre-sentence report, your Honour needs a pre-sentence report.

30 HIS HONOUR: Mr Wilson do you wish to tell me whether you are willing to attend for a pre-sentence report to be prepared, or any medical appointments?

35 OFFENDER: I'll break my silence then I'll go back into my silence to say that I'm willing to subject myself to any medical or mental examination that will further the cause.

HIS HONOUR: Thank you Mr Wilson, very wise, and are you willing also to go and see the probation and parole service so they can arrange these appointments?

40 OFFENDER: Yeah, I think that would be in the cause of what I'm trying to achieve.

HIS HONOUR: Thank you, Mr Wilson. Mr Crown is there anything further you wish to say to me on the question of bail?

45 ROWLING: No, your Honour.

50 HIS HONOUR: I think I am going to give bail until the matter is set down for sentence. I'm going to allow a sufficient period to pass to enable those appointments to take place.

OFFENDER: Yes.

5 HIS HONOUR: I'm also going to impose as conditions of bail, firstly, that the offender be of good behaviour; secondly, that he not approach I think it's 331 North Rocks Road, North Rocks,--

OFFENDER: Yes.

10 HIS HONOUR: --within 500 metres--

OFFENDER: Yes--

15 HIS HONOUR: Thirdly, that he not approach within any point of departure from Australia; fourthly, that he surrender any passport he may hold pending sentence; fifthly, that he refrain from any contact whatsoever with any Crown witnesses.

OFFENDER: Yes.

20 ROWLING: And in the case of Mr ..(not transcribable).. family, your Honour.

25 HIS HONOUR: Yes, and sixthly, that he attend the Probation and Parole Service to enable preparation of a pre-sentence report and all medical appointments arranged for him by the probation and parole service. He's already indicated that he will and I trust he will and it's most important that I have that information.

30 ROWLING: Does your Honour intend to leave the decision about what reports to the Probation and Parole Service?

HIS HONOUR: No, I'm going to direct--

35 ROWLING: May I suggest with respect some sort of neurological enquiry might be worthwhile.

HIS HONOUR: That's precisely what I intend to do, I'm going to suggest a neurologist and a psychiatrist.

40 ROWLING: Yes, if it please the court.

HIS HONOUR: I'll make detailed orders. In a former incarnation I know something about these things.

45 ROWLING: Yes, of course.

HIS HONOUR: What's the first Friday, in Parramatta, some time around August?

50 ROWLING: Can I just say this I don't think it will affect it. I am a Crown Prosecutor in this court only until the end of this month.

HIS HONOUR: We can't get reports by then.

ROWLING: No, I know that your Honour. I'm hoping your Honour will excuse my attendance providing some Crown--

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HIS HONOUR: Of course.

ROWLING: I would propose subject to your Honour's views to prepare and circulate I suppose in advance, and have available the next time a submission in writing as to the facts that the Crown would say your Honour would find the sentence.

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HIS HONOUR: I was going to suggest precisely that.

ROWLING: I will do that, your Honour, and if your Honour were to direct it of course it would be done.

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HIS HONOUR: I will direct it, and don't let me forget to direct it.

ROWLING: Would, your Honour, excuse my non attendance or absence on the next occasion?

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HIS HONOUR: Yes, I shall. The first Friday is 20 August in Parramatta, I've got several times before then but when I think of it these reports will take a good time to prepare.

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ROWLING: The pre-sentence report usually takes six weeks to start.

HIS HONOUR: Yes, exactly. Today is the - what is it, 9 June. It should be available on 23 July. So if I make it 16 August that's plenty of time.

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ROWLING: Yes your Honour.

HIS HONOUR: Stood over to 20 August 2010 in Parramatta for sentence. The offender granted bail until 20 August 2010, on the following conditions.

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1 Not to approach or contact in any way, any Crown witness, including in the case of Kamal Issa or his family.

40 2 Not to approach within 500 metres of 331 North Rocks Road, North Rocks.

3 To attend any medical or psychiatric examinations arranged by the probation and parole service.

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4 To attend Parramatta District Office of Probation and Parole Service.

Mr Wilson the Crown will provide you with that address today, before you leave court. Within seven days, to enable preparation of up to date probation and parole report.

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- 5 Not to approach within 500 metres of any point of departure from Australia.
- 5 6 To surrender immediately, any passport current or expired, issued by Australia or any other country.
- 7 To be of good behaviour at all times and to commit no further offences.
- 10 8 To report to the nearest police condition.
- Is a reporting condition required realistically Mr Crown?

ROWLING: No your Honour.

- 15 HIS HONOUR: Are there any bail conditions that I forgot?

ROWLING: No your Honour I don't think so. Your Honour say medical. Medical and psychiatric examinations.

- 20 HIS HONOUR: Yes I did say that.

ROWLING: You didn't actually specify what medical.

- 25 HIS HONOUR: No, no because I don't know.

ROWLING: I thought your Honour was going to say neurological and other medical.

- 30 HIS HONOUR: That comes under the heading of medical.

- 35 Probation and parole service to prepare up to date probation and parole report for 20 August 2010, without fail and to arrange appointments with a specialist neurologist and psychiatrist, to report on the medical and psychiatric state of the offender and any contribution by the offender's medical or psychiatric state to his offending behaviour, involved in the offences of which he has been convicted, or in his offending pattern before that time.

Are there any other orders required Mr Crown that you can think of?

- 40 ROWLING: I can't think of any your Honour.

- 45 HIS HONOUR: Mr Wilson your bail conditions are that you not approach or contact in any way, any Crown witness, including in the case of Kamal Issa and his family, that you not approach within 500 metres of 331 North Rocks, North Rocks. That you attend any medical or psychiatric examinations arranged by the probation and parole service. That you attend Parramatta District Office of the Probation and Parole Service, within seven days, to enable preparation of up to date probation and parole report. I should add to that, and medical appointments. In other words, probation and parole will
- 50 make the medical appointments for you and give you addresses.

Not to approach within 500 metres of any point of departure from Australia. To surrender immediately any passport, current or expired. Perhaps I should say, within 24 hours.

5 ROWLING: Your Honour perhaps ought to say to whom it ought to be surrendered. I think the registrar of the court.

HIS HONOUR: Condition is to surrender within 24 hours any passport, current or expired, issued by Australia or any other country, to the registrar of this
10 court. In other words, the court office here within 24 hours. To be of good behaviour at all times and not to commit any further offences. Those are your bail conditions Mr Wilson. If you breach any of those bail conditions, you are liable to be arrested and brought before the court and your bail is likely to be revoked. So please understand you must keep those conditions. I encourage
15 you to attend the medical appointments, which you have indicated your willingness to do and to attend the probation and parole service and to give them any necessary information that may enable them to prepare reports. Those reports would have an important influence on sentence and they have the result that unless a severe sentence is imposed upon you, than might
20 otherwise be the case, I don't know until I see the reports. It is important that I am equipped with that material.

Perhaps I should also say, I order that a copy of today's orders be sent to Parramatta District Office of the probation and parole service within 24 hours
25 by the registry of this court. When you arrive at the probation and parole service, Mr Wilson, they will have copies of my orders, so they know what has happened.

30 ROWLING: And your Honour was going to direct that the Crown bring in some written submissions and fix a date.

HIS HONOUR: Yes.

I direct that the Crown prepare written submissions on sentence, including the
35 facts which the Crown says I should find, on sentence, by 20 August 2010 and send copy to the offender immediately on completion of such submissions at his current address. Do you wish to say for the record Mr Wilson what your current address is, to make sure that document gets to you?

40 HIS HONOUR: There is no reply.

ROWLING: We will send it to the last known address which is the one at which he was arrested your Honour.

45 HIS HONOUR: Yes.

ROWLING: We will send them by pre-paid post, unless your Honour thinks otherwise.

50 HIS HONOUR: Thank you Mr Crown. Do you have anything further to add

Mr Crown?

ROWLING: No your Honour.

5 HIS HONOUR: Mr Wilson do you have anything further to add? Very well, the
matter is adjourned. Yes I am told the offender must go to the court office and
send these bail conditions before he is released.

10 ROWLING: We will make sure that we have that address. In fact the registry
will probably know your Honour,

HIS HONOUR: Thank you for that.

15 ADJOURNED TO FRIDAY 20 AUGUST 2010 FOR SENTENCE

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