IN THE DISTRICT COURT
AT MANUKAU

CRI-2015-020-998
[2016] NZDC 3434

NEW ZEALAND POLICE
Prosecutor

v

WILLIAM VILIAMU
Defendant

Hearing: 24 February 2016

Appearances: K Hamblin for the Defendant

Judgment: 2 March 2016

DECISION OF JUDGE G T WINTER
On Application for Stay of Proceedings

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[1] The applicant for stay submits that the delay of one year in progressing his criminal charges to a Judge-alone trial has breached his rights under s 25(b) of the New Zealand Bill of Rights Act 1990.

[2] There have been six call overs between 28 July 2015 when he entered plea to 30 January 2016. Upon each and every call, the Judge-alone trial has been remanded to further call over dates. It is accepted that the reason for the six remands has been the Court's inability to provide suitable hearing time for the trial. The applicant submits the extent of the breach is such that the correct and proportionate remedy is an order to stay of proceedings. Counsel submits that the delays have reached a point where they can correctly be described as egregious in terms of Supreme Court decision on *Williams v R* (2009) 24 CRNZ 468 (SC) at paragraph 18. A secondary

submission that the delay has been exacerbated by the New Zealand Police failing to disclose highly relevant DNA documentation was abandoned at the hearing. Counsel submits that the prejudice suffered by the delay can be best described as compromised memory of each and every witness leading to the defendant's disadvantage in conducting his defence.

Curial History

Date	Event
27 January 2015	Date of the alleged offence.
13 April 2015	Mr Viliamu arrested and interviewed by Police.
20 April 2015	Court appearance: Remand without plea to 11 May 2015. It is assumed this is for the purpose of Legal Aid to be assigned but is not noted on the file. Bail conditions are residential, not to consume alcohol and not to consume drugs.
11 May 2015	Court appearance: Not guilty plea entered. File transferred to Manukau District Court from Hastings District Court as that is location of alleged offence. For case review hearing 2 July 2015.
26 June 2015	Case management meeting attended. Counsel advised Police that disclosure was requested 23 April 2015 from Hastings Police but minimal disclosure on file.
1 July 2015	Case Management Memorandum filed with the Court, requesting an adjournment for disclosure and instructions from Mr Viliamu.
2 July 2015	Court appearance – Case review hearing: Defence application for adjournment to further case review hearing for full disclosure declined. Not guilty plea confirmed. No JAT dates available, to call over 31 July 2015 for date to be set.
3 July 2015	Further disclosure request emailed to Police specifically requesting the ESR fingerprint and blood specimen file, photographs and statement and notebook entries from all officers involved in the case.

8 July 2015	Phone message received from the officer in charge, Trevor Baker, that he does not have any disclosure and that the file has been sent to Manukau. Any requests need to be answered by Manukau CJSU.
14 July 2015	Second email for further disclosure sent to Manukau Police.
28 July 2015	Email from the Manukau District Court to advise that there are no available JAT dates. Call over on the 31 July 2015 cancelled. Further call over on 2 September 2015.
4 August 2015	Third email sent to Manukau Police for further disclosure request to be answered.
5 August 2015	Disclosure request acknowledged. Request forwarded to Manukau Prosecutions for a response.
2 September 2015	Court appearance – call over. No dates available. Adjourned to a further call over date.
3 September 2015	Phone message from Officer in charge Trevor Baker. That Constable Baker has spoken to Hastings Prosecution and has been advised not to follow this request up any further as the file has been transferred to Manukau. Advised Counsel to try and get assistance from Nigel Warren at Hastings Prosecution.
18 September 2015	Further disclosure request responded to by Manukau CJSU. Advised that the DNA report from ESR will not be prepared until a JAT date is set. Police exhibit form disclosed is illegible. Not all disclosure requested provided.
22 September 2015	Email from a Court Registry Officer advising that the charge is to be withdrawn by Police on 23 September 2015. (this email was sent to Mr Viliamu's previous Lawyer and was forwarded to Counsel on 23 September 2015 at 10.30am).
23 September 2015	Court appearance – Call over: Call over was administratively adjourned with no notice to Counsel. No dates available. Further call over date set 21 October 2015. Enquiries made after call over in relation to email received that charge is to be withdrawn. Police have no knowledge of this. Court Registry Officer advises at 1.02pm that it is an error and charge is not to be withdrawn.
21 October 2015	Court appearance – call over: Not JAT date available. To further call over 23 November 2015.

22 November 2015	Email from Court. Call over 23 November 2015 cancelled. Administratively adjourned to a further call over date 13 January 2016. No JAT date available.
12 January 2016	Email from Court. Call over 13 January 2016 cancelled. Administratively adjourned to a further call over date 24 February 2016. No date available.

[3] In *Williams* the Supreme Court endorsed the approach adopted by the Court of Appeal in the *Martin v Tauranga District Court* decision [1995] 12 CRNZ 509 where the Court of Appeal found a delay of 17 months in hearing a two day sexual violation case breached s 25(b) rights. A stay was ordered.

[4] Discussing similar systemic delays His Honour Justice Hardie Boys held at para 431:

> Delay can be caused by many factors, alone or in combination: inadequate Court facilities, understaffing or inefficiency of Court administration, insufficiency of Judges, deficiencies in the prosecution process. Observance of the s 25(b) right is the obligation of those responsible for each of these areas. The reasonableness of their actions is not however to be judged solely by reference to the resources they have at their disposal. It is the obligation of the State to provide the resources that are needed. The fact that delay is systemic does not justify it.

[5] While the Supreme Court endorsed the *Martin* approach, the Court preferred a nuanced inquiry about undue delay by reference to the functions of time, cause and circumstance. The Court found that undue in that context was synonymous with unjustifiable.

[6] The police submit that the delay of roughly seven months for trial of a burglary charge was not unusual given the case load of the Manukau District Court and the need to accommodate witnesses and counsel unavailability.

The Manukau District Court

[7] Manukau District Court has become the country's busiest criminal court and the second busiest jury court. It deals with 1200 new criminal cases a month and at any given time has about 3,600 cases on hand. There are on average 40,000 security movements a month requiring staff interaction with 20,000 people. There is no doubting the resilience and resourcefulness and goodwill of those responsible for

bringing the applicants case to a hearing. However, the administration of such large volumes of cases and people requires the determined management of a sound organised system; that includes a system of case scheduling.

[8] The applicant has waited too long for his case to be heard. The Court administration have been unable to provide hearing time for the case. It is the obligation of the State to provide the resources required to provide the applicant with a courtroom and Judge to determine the charge against him.

[9] While the heavy workload of the Manukau Court must be recognised as at least explaining the seven month delay between case review hearing and call over, I find it does not excuse that delay. Section 25(b) of the New Zealand Bill of Rights Act 1990 cannot be read down with a Manukau Court exemption. The Act applies to all citizens equally no matter from what part of the country they come or where the charge against them is laid. I find there has been systemic delay in allocating a hearing for the applicant's burglary trial. I find that that delay is not justifiable and breaches his rights.

Remedy

[10] Having found there is an undue delay, I then must consider whether stay of proceedings is an appropriate remedy in this particular case. Again, in *Williams* at paragraph 18 the Court summarized that inquiry in this way:

> The remedy for undue delay in an accused coming to trial must provide a reasonable and proportionate response to that delay. A stay is not a mandatory, or even a usual remedy. Staying the proceedings is likely to be the correct remedy only if the delay has been egregious, or there has been prosecutorial misconduct or a sanction is required against a prosecutor who does not proceed promptly to trial after being directed by a Court to do so.
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> If an accused is convicted after being on bail pending trial, a reduction in the term of imprisonment is likely to be the appropriate remedy. If the accused has been in custody, that time will count towards service of the term of imprisonment. In an extreme case the conviction may be set aside. Upon acquittal, monetary compensation may be justified. The seriousness of the offending will usually not be relevant to the nature of the remedy, if however the offending is well towards the lower end of the scale, that may be sufficient to tip the balance in favour of a stay.

[11] Relevantly, the Court in *Williams* also relied on Lord Bingham of Cornhill's judgment in A-G's Reference (No. 2 of 2001) where his Lordship said at paragraph 24:

> If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant is in custody, his release on bail. It will not be appropriate to stay or dismiss the proceedings unless (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the defendant. The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances. . . .

[12] The case itself will proceed simply around proof of the defendant's DNA from blood located at the scene and thereafter the exclusion of any explanation for the presence of the defendant's blood at the scene. In that sense, the case is relatively straightforward. I am satisfied that the case is not complex, that the delay while systemic and unjustifiable is explicable because of the workload of this particular Court. I have today made arrangements for the Judge Alone Trial to proceed in eight weeks time on 14 April 2016. In all of those circumstances, although I have found there has been undue delay, I equally find that the proportionate remedy is this public acknowledgement of the breach and the action I have taken to expedite the trial to the greatest extent possible.

[13] The application is accordingly refused.

G T Winter
District Court Judge