

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT WHANGAREI**

**CRI-2016-088-001579
[2017] NZDC 23061**

THE QUEEN

v

**[MASON NEWTON]
[NICHOLAS OWENS]**

Date of Ruling: 10 October 2017

Appearances: K Macneil for the Crown
J Moroney for the Defendant [Newton]
J Watson for the Defendant [Owens]

Judgment: 10 October 2017

RULING 2 OF JUDGE C M RYAN

[1] This morning I declined the Crown's application for an adjournment of this trial. I also indicated that on the basis of *R v Christian*¹ I would be sympathetic to an application for the complainant to give evidence by alternative mode, namely by CCTV. Mr Macneil for the Crown asked for some time to consider the Crown's position so a short adjournment was granted.

[2] At the conclusion of the adjournment Mr Macneil asked for leave to withdraw the charges under s 146 Criminal Procedure Act 2011. Defence counsel Mr Moroney

¹ *R v Christian* [2016] NZHC 1568

and Mr Watson opposed that application and instead sought that the charges be dismissed pursuant to s 147 of the same Act.

[3] Mr Macneil submitted that the Crown is not going to bring the complainant to Court and is not going to seek a warrant to arrest him. He said that the Crown was not going to “re-victimise” him, which was Mr Macneil’s word, by requiring him to give evidence. For this reason, the s 146 application is made.

[4] Mr Moroney and Mr Watson submitted that the complainant is not here, he has no intention of being here, the Crown does not intend to bring him here and therefore the Crown is not able to offer evidence against the defendants. Accordingly, this trial cannot proceed and the appropriate step is not to withdraw the charges but to dismiss them and bring this protracted matter to an end.

[5] I accept the defence submissions. Without the complainant, the Crown is clearly not in a position to offer evidence. No notice pursuant to s 22 Evidence Act 2006 has been made and the Crown does not submit that it can proceed in the absence of the complainant. Realistically, any s 22 application would be opposed and the Crown responsibly accepts that.

[6] In short, the trial cannot proceed. There cannot be an adjournment for the reasons I explained in my last ruling. The key witness is not present so the Crown is not in a position to offer any evidence on the charges.

[7] Accordingly, pursuant to s 147 I am dismissing the charges against Mr [Newton] and Mr [Owens].

[8] Mr [Newton], pursuant to s 147 I dismiss the charges against you of demanding with menaces, possessing an offensive weapon and arson. In relation to both you, Mr [Newton], and you, Mr [Owens] I dismiss the charges of wounding with intent to cause grievous bodily, causing grievous bodily harm with intent to cause grievous bodily harm and aggravated robbery.

C M Ryan
District Court Judge