IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION) **JP APPEAL NO. 6/2018**

IN THE MATTER	of Section 83(5) of the Criminal Procedure Act 1980-81, Article 65(1)(F) of the Constitution, and Section 76(1) of the Judicature Act 1980-81
AND	
IN THE MATTER	of an **APPEAL AGAINST THE DECISION OF JUSTICE OF THE PEACE** not to allow the release from custody on bail of the Applicant
BETWEEN	**IOVANE LANGATULE PAERAU**, Prison Inmate, Arorangi Prison Appellant
AND	**POLICE** Respondent

Counsel: Mr N George for Appellant
Mr S Baker Solicitor General for Respondent

Date of Hearing: 21 December 2018

Date of Judgment: 29 December 2018

ORAL JUDGMENT OF HUGH WILLIAMS, CJ

[WILL0530.dss]

[1] This is an appeal brought at short notice against a decision of a Justice of the Peace to remand the appellant, Mr Paerau, in custody pending his further appearance in the Justice of the Peace Court on 17 January 2019, and his appearance at a callover in the High Court sessions commencing on 11 March 2019.

[2] The criminal decision sheet which has been provided covers the JP's decisions on 15 and 22 November and a further decision on 13 December which is the decision appealed against. It shows Mr Paerau currently faces a number of charges in the Cook Islands, seven burglaries, one arson, one of resisting or obstructing justice, one each of possession of a firearm and cannabis seeds. He has not as yet pleaded to any of those charges but the indications are the pleas will be Not Guilty.

[3] The JP's were clearly exercised and concerned not just by the number of charges which the appellant faces in Rarotonga but also by the production to them of a list of previous convictions entered against the appellant in Queensland, Australia. They will be detailed in a moment.

[4] The JP's decision of 13 December 2018 deals with the then position concerning the appellant and noted that the JP was concerned both about the current charges but "much more importantly for bail purposes the defendant's history from Australia". The decision to remand the appellant in custody was principally based on whether he would comply with any bail conditions and whether he may reoffend. Clearly enough, as with any such situation, the JP was also concerned as to whether the appellant might have been a flight risk from the Cook Islands.

[5] Mr George helpfully filed comprehensive submissions setting out the circumstances and relied on some media coverage concerning disclosure of the appellant's Australian convictions. Again there will be some details given of that later.

[6] Mr George properly drew attention to the presumption of innocence that his client enjoys and that a person under Article 65(1)(f) of the Constitution in the appellant's position only has a discretionary right to bail, but it is a right to bail nonetheless. He submitted that the JP wrongly exercised his decision to remand in custody. He made the point that there is no evidence suggesting the possibility of flight from the Cook Islands, particularly given that the appellant is prepared to surrender his passport and agreed to a curfew and a residency clause should he be admitted to bail. Mr George made the point that apparently the appellant's partner is expecting their first child and the pair wish to marry. He also proposed a reporting clause.

[7] The Solicitor-General in his helpful submissions drew attention to the seriousness of the charges faced by the appellant, and the fact that there have been successive bail applications which have been declined by the JP's. He made the point that the appellant only returned to the Cook Islands in March this year after being deported from Australia and that the current charges largely stem from the execution of a search warrant on 13 November 2018 at which point the appellant questioned the legality of the search warrant and the police had to use bolt cutters in order to obtain access to a shed on the appellant's property where a significant amount of property allegedly stolen, including the firearm, was discovered. Mr Baker made the point that the arson charge arises out of the burning of a property where one of the burglaries is said to have occurred.

[8] Mr George makes the point, which is a valid point, that the appellants chances of decamping from the Cook Islands would be extremely limited particularly if conditions were imposed concerning surrender of his passport and a curfew. That also would limit any chances of reoffending.

[9] There are the two further circumstances mentioned.

[10] The first of those is that the Police produced to the JP a certificate from the Australian or Queensland Police concerning the appellant's previous convictions and record. Although Mr George is correct that one cannot directly compare the convictions from Australia with the charges in the Cook Islands – for instance what we might call theft is described as stealing – othere is an obvious comparability which discloses the appellant's penchant for offending against the criminal law. Just how many convictions there are is a little in doubt but there appear to be well over a hundred and they include convictions for resisting arrest or obstruction, for explosive or drug offences and, perhaps of most concern in the present circumstances, what would appear to be over sixty convictions for breaches of suspended sentences, breaches of bail and failing to appear. So there is at least a propensity for criminal offending demonstrated by the list of convictions from Australia which has some rough comparability with the types of charges the appellant is facing in Rarotonga. At least they justify the JP's concern about the possibility of reoffending.

[11] The other matter which is unusual, and, one hopes unique, is that somehow the list of the appellant's previous convictions was given to a local Member of Parliament who then was interviewed by the Cook Islands News and made a number of statements about the appellant's position which can only be described as reprehensible in the circumstances in the sense that those statements might well influence any future jury trying the appellant's charges and cut across the appellant's presumption of innocence and his right to privacy.

[12] As mentioned, that disclosure and publicity is most unfortunate but it is an issue which is largely irrelevant as far as this bail appeal is concerned although it may well sound on issues such as the trial fixture in the future and may be a matter to be taken into account in that regard.

[13] However, for the purposes of this appeal, that unfortunate disclosure should be put to one side and one needs to revert to considering whether the JP acted on a wrong principle or in other ways failed to give due consideration to the appellant's circumstances when remanding Mr Paerau in custody.

[14] Looking at the JP's decision, in the light of all of that, it is clear that what influenced the JP in remanding the appellant in custody was first the seriousness of the charges which Mr Paerau faces. Set alongside the list of his convictions for roughly similar offences in Australia and thirdly the doubts the JP expressed as to compliance with any bail conditions and the possibility of reoffending or decamping. The conclusion must be that the JP is not shown to have been wrong or exercised incorrect principles in remanding the appellant in custody.

[15] While there is a certain force in Mr George's submissions that the opportunities for reoffending or decamping in Rarotonga may be more limited than in a larger jurisdiction, nonetheless the appellant faces a large number of very serious offences which are in a sense consonant with the offending for which he has been imprisoned on a number of occasions for lengthy terms in Australia.

[16] So the JP was perfectly justified in concerning himself with compliance with bail conditions and the possibility of reoffending. It is unfortunate that the appellant's previous convictions are already in the public domain but, as mentioned, that is of little relevance to the question of a bail appeal.

[17] The appellant, in the Court's view, has failed to demonstrate that the JP's decision was based on a wrong principle or took irrelevant circumstances into account or failed to consider the relevance of the various matters before him. On all those bases the appeal fails and is hereby dismissed.

[18] The appellant remains remanded in custody until his appearance before the JPs' Court on 17 January 2019.

It remains to add that when this judgment is transcribed it will be issued only to the appellant and his counsel and to the Police and the Solicitor-General. There is to be no wider public dissemination of this decision.

Hugh Williams, CJ