

POLICE

v

**PHILIP WALTER MONTGOMERY STRICKLAND
RUTRIL MATAMARU ENOKA
TAMARI TEREMOANA KAIVANANGA
TIPINE TAMA TETAVA**

Date of Zoom hearing: 5 February 2021

Appearances: Ms A Maxwell-Scott and Ms M Okotai for the police
Mr N George for all defendants

Judgment: 5 February 2021

**ORAL JUDGMENT OF HUGH WILLIAMS, CJ
(re. Bail)**

[11:03:51]

[1] This judgment deals with the cases of Police against Philip Walter Montgomery Strickland, Rutril Matamaru Enoka, Tamari Teremoana Kaivananga, and Tipine Tama Tetava, more especially with applications by all four of the accused for bail.

[2] They are all charged with offering to supply or supply or selling a class C controlled drug, namely cannabis, and money laundering. All of them face a number of charges in relation to those matters. All the offending is alleged to have occurred during the 2019 year: no charges have been laid in respect of any alleged offending after 31 December 2019.

[3] In brief, the summaries of fact which have been prepared are that in the Crown's view Mr Strickland, as the leader of the group, orchestrated the others to undertake the selling of cannabis on a large scale, on a considerable number of occasions and on a considerable number of days during the 2019 year, collecting the money resulting from those sales and

paying them in accordance with his directions into various accounts in various banks. The evidence on the summaries of fact – so far of course, untested – is that the operation was carried on largely by text messages from mobile phones plus, of course, the occasions when money was paid into the various bank accounts.

[4] The case is, perhaps, a little unusual in that, on the summaries of facts so far produced, there is little or no evidence of actual sales being made. There are mainly the bank records to cover the remission of funds and text messages from the various accused's several mobile phones and what was said in them as evidence of the sales. Ms Maxwell-Scott for the Police said there are some factual witnesses in relation to the sales but it does appear that the main thrust of the evidence at trial will be the admission of the many text messages from the several cell phones held by the accused and the meaning to be ascribed to those messages. That will be coupled with the banking records showing the crediting of substantial sums of money to various accounts, all allegedly relating to, or allegedly under the organisation of Mr Strickland.

[5] All defendants have been remanded in custody since 28 January 2021.

[6] In support of the application for bail Mr George, acting for all four at the present time, relies on Article 65(1)(f) of the Constitution saying that persons charged with offences are not to be deprived of the right to reasonable bail except for just cause and the presumption of innocence to which all are entitled. He points to the lack, or relative lack, of qualifying convictions which might impact on their application for bail. He suggests that there is, given the age of the charges, little chance that the defendants if granted bail would interfere with witnesses. He says the defendants offer to surrender their passports, submit to a curfew and comply with any other conditions. In particular Mr George says that, if the prosecution seeks a non-association clause, there would need to be an exception to allow him to interview more than one of the accused at the same time in order to prepare their defence.

[7] The prosecution strongly opposes bail, especially for Mr Strickland. They point to what is submitted to be strong evidence of the offences with which the accused are charged. The duration of the offending and the necessity to take whatever steps are appropriate both to prevent the accused associating with each other and of course from committing other offences during the period on remand.

[8] Currently Mr Strickland is charged with committing his offences in association with the others, but the remaining three defendants are all charged separately. While there would clearly be efficiencies in a joint trial to avoid repetition of what could be quite lengthy evidence, technically, at least, each of the three accused other than Mr Strickland are entitled to separate trials. Mr George advises that consideration is being given as to whether to oppose a joint trial either for all four, or for the three other accused jointly with Mr Strickland.

[9] As disclosure emerges there may be room for means to be adopted to shorten the length of the trial, for instance by admission of the banking records without admission of their claimed purpose. But at the present time the trial appears as though it will be a relatively lengthy one and the time which must pass before the accused can be tried, will also be lengthy, given the backlog of criminal matters which has arisen as a result of the Covid19 pandemic and the possible length of the trial itself. So, as presently appears, if the four accused are remanded in custody their period of incarceration will be a number of months, perhaps many months before the merits of the matter can be investigated and the guilt or innocence of the accused established in front of a jury.

[10] These matters are still at a relatively early stage. There are significant documentary records which need to be analysed and disclosed, and then analysed by Mr George. Major decisions still need to be made as to joint trials or the like. There are the possible admissions mentioned earlier which could be made in relation to the length of trial. As time passes it will become clearer how long it will be before the trial or trials can be held.

[11] The Crown accepts that if bail is to be granted, especially for Mr Strickland, it suggests conditions should be imposed to minimise as far as possible the capacity of the accused for further offending. Conditions as to curfew, reporting and passports are suggested, plus a non-association condition and another that the accused be debarred from owning or using a mobile phone.

[12] Whilst it is understandable that the Crown seeks the most restrictive conditions that can be envisaged to minimise the chance of reoffending, there is a lack of practicality in some of the conditions proposed. For instance, debarring the accused from owning a mobile phone may be impracticable in their personal employment or other circumstances and there is

nothing to stop them borrowing another cell phone. Non-association would be difficult to police.

[13] The result is that, however restrictive the conditions of bail might be, they would be of limited use in trying to meet the aim of reducing the possibility of further offending, and in that regard the fact that there has been no offending alleged in the year since the offences were said to have been committed is a significant factor.

[14] In the end, at this preliminary stage of the matter, insufficient argument has been propounded by Mr George on the accused's behalf to justify the granting of bail to them, set against the limited probability of any restrictive conditions of bail minimising the chance of reoffending.

[15] On the face of the summaries of fact, the charges give the appearance of being soundly based, but once disclosure is made and the ensuing records analysed that possible inference may be dispelled.

[16] The conclusion to be reached *at this stage of the matter* [emphasis added] is that the case for bail has not been made out, or to put it more precisely, just cause has been shown to retain all four defendants in custody.

[17] But that situation needs to be reviewed once disclosure has been made and, accordingly, the applications for bail will be adjourned at this point to the March 2021 sessions of the High Court. At those sessions there is to be a review of the question of bail seen in accordance with the circumstances of the offences as they then are and if the current apparent strength of the prosecution cases against the four accused can be undermined by the then position concerning the prosecution as known to the defence, it may well be that, in combination with the length and time they would remain in custody before trial, a rather more persuasive case for the grant of bail on strict conditions can be made out.

[18] The conclusion at the moment, however, is that all four applications for bail are adjourned, but the matter will be reviewed at a date and time to be fixed by the Registrar during the March 2021 sessions.

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