

**NOTE: HIGH COURT ORDER IN [2014] NZHC 550 PROHIBITING
PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF
DEFENDANTS IN [2014] NZHC 550 AND [2014] NZHC 1848 REMAINS
IN FORCE.**

**NOTE: DISTRICT COURT ORDER IN [2018] NZDC 15368 PROHIBITING
PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF T, C, H, B
AND M REMAINS IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 83/2019
[2020] NZSC 39**

BETWEEN DERMOT GREGORY NOTTINGHAM
Appellant

AND THE QUEEN
Respondent

SC 23/2020

BETWEEN DERMOT GREGORY NOTTINGHAM
Applicant

AND DEPARTMENT OF CORRECTIONS
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
C A Brook for Respondents

Judgment: 24 April 2020

JUDGMENT OF THE COURT

**A Pending the hearing of the appeal against sentence
(SC 83/2019) in this Court, the appellant is granted bail on
the conditions set out in [14] below.**

B The application for leave to appeal against the decision declining habeas corpus (*Nottingham v Department of Corrections* [2020] NZHC 332) is dismissed.

REASONS

Introduction

[1] The Court has granted Mr Nottingham leave to appeal against a sentence of home detention of 12 months imposed following a successful Solicitor-General appeal to the Court of Appeal against sentence.¹ On appeal the Court will consider the correctness of the decision to impose “the maximum period of home detention [12 months] in circumstances where the offender had already served a period of home detention in relation to the offending”.²

[2] The appeal is to be heard on 14 May 2020.

[3] Mr Nottingham now seeks bail. He has also filed an application for leave to appeal directly to this Court against the decision of van Bohemen J declining to grant habeas corpus.³ After setting out the background, these applications are dealt with in turn.

Background

[4] Mr Nottingham was convicted of publishing information in breach of suppression orders and of criminal harassment. He was sentenced by the trial Judge, Judge Down, to a term of 12 months’ home detention and 100 hours of community work.⁴ In allowing the Solicitor-General’s appeal against sentence, the Court of Appeal quashed the part-served sentence of home detention and imposed a new sentence of 12 months’ home detention together with 100 hours of community work.⁵

¹ *Nottingham v R* [2020] NZSC 23.

² At [3].

³ *Nottingham v Department of Corrections* [2020] NZHC 332 [habeas corpus decision].

⁴ *R v Nottingham* [2018] NZDC 15373.

⁵ *Nottingham v R* [2019] NZCA 344 at [120].

[5] Because Mr Nottingham had served a period of three and a half months' home detention prior to the Court of Appeal decision, he will have served 15 and a half months' home detention by the sentence expiry date of 29 July 2020. Mr Nottingham's calculation is that he had served 12 months' home detention by 9 April 2020.

The application for bail

[6] Against this background, bail is sought on a number of grounds. Those grounds include the strength of the appeal and the need to protect Mr Nottingham from what he says is arbitrary detention.

[7] Bail is opposed by the Crown on a number of bases. The key submissions can be summarised as follows. First, it is said that the appeal has no merit. This submission relies primarily on the proposition that the previous sentence was of no effect once quashed by the Court of Appeal and also on the fact that the time served was taken into account by that Court. On this basis, the sentence imposed was lawful. Second, the submission is that there is no risk that the appeal will be rendered nugatory if bail is not granted. This is essentially because, the Crown says, that if Mr Nottingham succeeds on his appeal then the sentence of home detention would have to be replaced with a sentence of imprisonment.

Our assessment

[8] We accept the submission for the Crown that the application for bail should be treated as an application for bail pending determination of the sentence appeal.⁶ It is therefore necessary to decide whether a grant of bail is in the interests of justice.⁷ We consider that test is met primarily because there is a risk that Mr Nottingham's sentence appeal would otherwise be rendered nugatory. The point of Mr Nottingham's appeal is to establish he could not lawfully be required to serve more than 12 months' home detention. It is not disputed that Mr Nottingham has now served 12 months' home detention.

⁶ The Crown submission refers to s 54 of the Bail Act 2000 which provides for bail pending appeal against conviction and sentence.

⁷ Bail Act, ss 14 and 54(2)(c).

[9] The submission for the Crown that the appeal is not otherwise rendered nugatory relies on the proposition that a sentence of imprisonment would inevitably be imposed on Mr Nottingham should his appeal succeed. But that is not necessarily so. The Court would have the usual powers applicable on a sentence appeal.

[10] Bail is accordingly granted on the conditions set out at [14] below.⁸

The proposed habeas corpus appeal

[11] The habeas corpus appeal is essentially brought on the same basis, that is, detention beyond the period of 12 months is unlawful.

[12] The habeas corpus application was dismissed by van Bohemen J on two bases. First, the Judge considered that the respondent in that case had established the lawfulness of the detention because Mr Nottingham was subject to detention under a lawful order of the Court. Second, the Judge found that habeas corpus was not an appropriate remedy where Mr Nottingham was using habeas corpus to pursue his sentence appeal.

[13] We are satisfied that there are no exceptional circumstances to justify a direct appeal to this Court.⁹ That is because, as van Bohemen J found, the question Mr Nottingham would have the Court consider is “classically a question for appeal” and Mr Nottingham will have that on 14 May 2020.¹⁰ His position in the interim is preserved by the grant of bail.

Result

[14] Pending the hearing of the appeal against sentence (SC 83/2019) in this Court, the appellant is granted bail on the following conditions:

- (a) to reside at all times at the address agreed by the parties;

⁸ The conditions are those imposed by the Court of Appeal in granting Mr Nottingham bail pending the appeal to that Court. The Crown submission is that if bail is granted these are the applicable conditions. Mr Nottingham does not oppose these conditions.

⁹ Senior Courts Act 2016, s 75.

¹⁰ Habeas corpus decision, above n 3, at [16].

- (b) not to apply for travel documents;¹¹
- (c) not to associate or have contact, directly or indirectly, with any of the witnesses who gave evidence for the Crown (or whose evidence was read or admitted by consent) in the District Court trial, other than with written consent from Crown counsel;
- (d) not to associate or have contact, directly or indirectly, with the victims in the District Court trial (T, C, H, B and M);
- (e) not to access the Lauda Finem website other than for the purpose of preparing material directly relevant to the appeal;
- (f) not to post information on, or provide information to be posted on, the Lauda Finem website; and
- (g) not to post information on, or provide information to be posted on, any website relatable directly or indirectly to the victims in the District Court trial (referred to in (d) above).

[15] The application for leave to appeal against the decision declining habeas corpus is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondents

¹¹ The Crown submits the Court should confirm that Mr Nottingham still does not hold a valid passport. However, the need for such confirmation is overtaken by the current position in New Zealand with respect to travel under COVID-19 alert levels 3 and 4.