

IN THE LOCAL COURT
DOWNING CENTRE

MAGISTRATE R WILLIAMS

TUESDAY 21 JUNE 2022

2022/00021112 - R v Tony SMITH
2022/00179582 - R v Tony SMITH

**STATUTORY NON-PUBLICATION ORDER RE IDENTITY OF
COMPLAINANT**

APPLICATION FOR BAIL

Mr B Woolf for the Applicant appeared via AVL
Sergeant McKinnon for the Respondent

AUDIO VISUAL LINK COMMENCED AT 10.28AM

HIS HONOUR: Matter of Anthony Smith.

WOOLF: Your Honour, I appear in that matter. It's Woolf. Mr Smith is on the screen.

HIS HONOUR: Thank you, Mr Woolf.

WOOLF: This is a release application, your Honour.

HIS HONOUR: Sergeant, the documents, please.

FACTS AND RECORD TENDERED WITH NO OBJECTION

Ms Simons, we have in excess of 12 fresh custodies, so I will be dealing with this matter. Fresh custodies may have priority.

MATTER STOOD IN LIST

Mr Woolf, there's a release application plus there is a detention application; is that right?

WOOLF: I wasn't aware there was a detention application but that's fine. I can proceed.

HIS HONOUR: Sergeant, what are you relying upon in the detention application?

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MCKINNON: The fresh offending, your Honour.

HIS HONOUR: There's a good behaviour condition, it appears. Mr Woolf, is the breach admitted?

WOOLF: Sorry, your Honour?

HIS HONOUR: Is the breach admitted?

WOOLF: In the sense that there have been new charges? Yes, in that sense, but the charges he's going to enter pleas of "not guilty" to that charge, and the fact that there was a new charge does enliven the fact that there is a breach, so yes. That part is accepted.

HIS HONOUR: Thank you. I know there's a different test which needs to be applied.

WOOLF: Sorry, your Honour?

HIS HONOUR: I note there is a different test which needs to be applied on the detention applications as to the other criminal matter generally.

WOOLF: Yes. It is accepted, your Honour. Yes.

HIS HONOUR: Thank you. I find that the breach is established on the facts, noting what's alleged. Sergeant, are you pressing the detention application?

MCKINNON: Yes, your Honour. Yes.

HIS HONOUR: Could you submit on unacceptable risk.

MCKINNON: Thank you, your Honour. Your Honour, the prosecution say that the applicant is an unacceptable risk of endangering the safety of the complainant and failing to appear. Your Honour, we ask the Court to accept that the substantive charges that Mr Smith finds himself on bail for are very serious offences, and we say that although we accept that the accused person comes before this Court with no criminal history prior to the substantive charges, we say that they're serious enough that the s 5 threshold could be crossed, and we say that the strength of the prosecution case in those matters is strong with electronic evidence to substantiate the charges. We also ask the Court to note that this is not the first time that I withdraw that, your Honour. We ask the Court to accept that the strength of the case in respect of the contravention is strong.

There is electronic evidence from the subscriber that the phone number that was used to call the complainant's phone was in fact registered to the applicant. Furthermore, we say that the strength is bolstered by the fact that the protected person in fact recognises the voice of the applicant as being the caller, and it's for those reasons, your Honour, we say that there is a likely conviction in these matters and we say that there is no delay in this Court as far as being on remand is concerned, and that Mr Smith would not run the risk of spending more time on remand than what his ultimate sentence will be for

both matters, and it's for those reasons we say that Mr Smith's bail should be revoked and that bail should be refused in the fresh charges also.

HIS HONOUR: Thank you. Mr Woolf.

WOOLF: Yes. Your Honour, just in relation to the submission on failure to appear, I submit that there is no risk of failure to appear. This is a person who has zero criminal history whatsoever. He's 52 years old. He's never not wanted to come to court. Also, the fact that he's entered pleas of "not guilty" to the substantive offences is indicative of the fact that he does wish to attend court to defend the charges. In relation to my friend's submission as to a custodial penalty being imposed, I respectfully disagree with submission and I would submit that, in terms of the substantive offences, that they do fall towards the lower end for these particular reasons. Of course, it's just an allegation at the moment, but the images were distributed to the person the subject of the image, not to somebody else. There were only two images distributed. The images were not obscene. They were just of a person allegedly naked. In my submission, those substantive offences actually fall towards the lower end of the scale of objective seriousness and it would be a grave step for the Court to find that the threshold is crossed for somebody who has zero criminal history whatsoever.

In relation to the conditions that I would suggest which would mitigate any of the concerns from materialising, and I do accept that there is a concern that arises as to potentially committing a further offence, and those two conditions that I would add to the current conditions are just to possess one mobile phone and a number, and I'd invite the prosecution to request an enforcement condition to check that. Second of all, I'd suggest that a condition be imposed that Mr Smith attend upon a GP for the purpose of preparing a mental health plan because, if your Honour accepts the facts, then it's clear that this is a person who has not been able to deal with the end of a particular relationship. That really is his criminogenic need. If he does see someone and address that issue, that's going to ameliorate any kind of risk of those concerns from materialising. He works fulltime as a train driver. He is occupied. He is a person of good character. Even if he were to be convicted, as I said, it would be a bold step to find that the threshold is crossed in relation to all of the offences. Those are my submissions, your Honour.

HIS HONOUR: Yes. Thank you.

In this matter I do note there are two applications before the Court. One is a detention application and on the detention application I previously found that the breach is established, and that relates to a breach of the good behaviour condition, and in particular, the no contact.

The Court notes that the detention application is pressed. There is also an application that is H ending in 788 that relates to a release application for the fresh charge of 19 June 2022. The Court notes that in considering both applications, the Court needs to assess the bail concerns, and I note as follows that Mr Smith does have a nil prior history. I note the matters before

the Court are serious. I note that it would appear from looking at the strength of the prosecution's case that it is a reasonably strong case. Pleas of "not guilty" are indicated, or have been entered in relation to each of these matters.

As to prior history of violence, again, there is nil prior. As to noncompliance with orders of the Court, again, there is nil prior history. If bail is revoked or refused, Mr Smith will spend some months in custody. I do note that the H ending in 724 is listed for hearing on 15 August 2022 and that is some eight weeks.

The Court, in looking at the facts of these matters, whilst I would consider that a custodial sentence would be considered by the Court, there may be other alternatives other than a fulltime custodial sentence, particularly in H ending in 724. The Court would consider that the concerns are endangering the safety of the victims.

I am satisfied that strict conditions can allay those concerns.

IN RELATION TO THE DETENTION APPLICATION, I PROPOSE TO CONTINUE THE BAIL, AND

IN RELATION TO THE FRESH MATTER OF H ENDING IN 788, I GRANT BAIL.

FIRSTLY, WITH REGARDS TO THE DETENTION APPLICATION, THE PREVIOUS BAIL IS TO CONTINUE.

In addition, the previous bail is varied by including a condition to possess only one mobile phone and to provide the phone number and the IMEI number to police within 24 hours of release, and

Also produce that phone to police upon request to a certain compliance with bail conditions, and

Further, he is to present himself to a local general practitioner within 48 hours of release and seek referral for mental health assistance.

FOR H ENDING IN 724, WHICH IS THE DETENTION APPLICATION, BOTH MATTERS WILL BE ADJOURNED TO 15 AUGUST 22.

That appears to be at the Downing Centre; is that correct?

WOOLF: Yes, your Honour.

HIS HONOUR: I note the hearing, and that completes that matter.

The other matter, which is H ending in 788. There is to be a plea of "not guilty" entered?

WOOLF: Your Honour, yes. Plea of "not guilty" entered.

HIS HONOUR: Yes. Plea of "not guilty", and

WOOLF: It's a matter that does require a brief.

HIS HONOUR: Doesn't?

WOOLF: It does require a brief.

MCKINNON: It does, yes.

HIS HONOUR: I'll make some brief orders and the matter can come back.

MCKINNON: Thank you.

HIS HONOUR: I know he has bail so it will just go back to the normal court at the Downing Centre.

I MAKE THE FOLLOWING BRIEF ORDERS.

A BRIEF BE SERVED BY 19 JULY AND THE MATTER WILL COME BACK TO THE DOWNING CENTRE ON 27 JULY TO FIX HEARING DATE.

THE CONDITIONS OF THAT MATTER ARE AS FOLLOWS:

HE IS TO RESIDE AT 801/281 ELIZABETH STREET, SYDNEY;

TO ATTEND A LOCAL GP AND SEEK REFERRAL FOR MENTAL HEALTH ASSISTANCE WITHIN 48 HOURS OF RELEASE;

FURTHER, HE IS TO COMPLY WITH THE AVO WHERE THE PERSON IN NEED OF PROTECTION IS ISAAC RUSHTON.

FURTHER, HE IS TO POSSESS ONLY ONE MOBILE PHONE, AND

WITHIN 24 HOURS OF RELEASE, HE IS TO PROVIDE THE OFFICER IN CHARGE OF THE MOBILE FILE NUMBER AND IMEI NUMBER, AND

HIS COMPLIANCE WITH BAIL CONDITIONS.

They are the conditions and as I said, that matter will come back on 27 July 2022 at the Downing Centre to fix a hearing date. Yes. Thank you, Mr Woolf.

WOOLF: Thank you.

HIS HONOUR: You're excused. Mr Smith, make sure you comply with those bail conditions. Please knock on that door and leave that room. Thank you.

APPLICANT: Thank you.

AUDIO VISUAL LINK CONCLUDED AT 10.51AM

ADJOURNED TO WEDNESDAY 27 JULY 2022