

**IN THE DISTRICT COURT OF NEW ZEALAND
HAMILTON**

CRI-2021-068-00157

UNDER THE Crimes Act (1961)

IN THE MATTER OF: Obtaining by Deception

BETWEEN: THE QUEEN

AND: Dennis Arthur Smith
Beneficiary of Taumarunui
Defendant

**MEMORANDUM REQUESTING
CORRECTIONS & RECONSIDERATION**

Dated: 24 December 2021

Filed by: Dennis Arthur Smith, Plaintiff.
Address for Service: dennis@dennis.nz
4/2a Para St, P O Box 2, Taumarunui, 3946 NZ

May it please the court:

- 1 On 10 December 2021, the Defendant was advised by District Court staff to respond to a judgment by District Court Judge (DCJ) R G Marshall on this matter dated 9 December, 2021 by way of a Memorandum to the DCJ detailing his multiple concerns.
- 2 On or about the same date the Registrar of the Court of Appeal advised the Defendant that he would accept any direct Appeal relating to CRI-2021-0068-00157 under s219(1)(b)(i) and s219(1)(c) of the Senior Courts Act 2016, this matter being a Category 3 Offence with election of trial by jury.
- 3 This is that memorandum.

Correct Name

- 4 In Clause 1 (a) of the judgment the the DCJ said, *“I have amended his name [to Camel Case] by consent.”*¹ however the ruling issued still refers to my name using FULL CAPITALS.
- 5 Service Manager – Criminal Jury Case Management & DC, Ian Bullock, has previously explained to me that this requested change of spelling of a charged Defendant is problematic due to technical limitations, *“Our system is called CMS (Case Management System) charges are initially entered by Police or Corrections in this CMS system when charges are laid, including the name of the person the charges are laid against. Police will typically differentiate a last name in CAPS, that name and how it is entered is then carried though the system for the entirety of the case. I have enquired about have a changing of your name with our CMS / IT team, but I have been advised that this will need a change to our system. I have escalated your query to our national operations support team to get an official MOJ response, as changing names in our CMS system is not anything my team or myself can do locally”*².

1 All quotes [italic] are from the LEGAL DISCUSSION BEFORE JUDGE R G MARSHALL, 9 December 2021 unless otherwise identified.

2 Email, Wed, 8 Dec 2021, 12:28

Remedy

- 6 Would the court please therefore:
- 6.1 Do the needful to reissue this judgment with my asked for and court-ordered change; or
 - 6.2 Append an amended judgment to the effect requested (i.e. my name spelled correctly [Camel Case]); and/or more simply
 - 6.3 Issue a ruling that there is no legal difference between the two spellings.

Jurisdiction & Duress

- 7 In pre-ruling discussions the DCJ stated that my lack of consent mattered not to the District Court's jurisdiction, eventually resulting in the DCJ saying in his ruling, *"I have therefore determined that I have jurisdiction"*³.
- 8 I asked the DCJ on what basis the court claimed jurisdiction to which he replied that various 'unidentified' rulings from other courts had canvassed "that matter" at length, ending with his assessment that the Crimes Act 1961 applied to me and that he had jurisdiction because I was *"in New Zealand"*⁴.
- 9 I still did not and have never provided consent to this court's jurisdiction.
- 10 The DCJ agreed to note however that I proceeded with this matter under duress, *"I'll note that you're under duress"* but this acknowledgement does not appear in the judgment as I asked for and he agreed to.

Remedy

- 11 Would the court please:
- 11.1 Forward me a copy of the File where this word "duress" was noted on 9 December 2021; and
 - 11.2 Update to include or to add the agreed words "under

3 Minute of Judge R G Marshall, 9 December 2021

4 Ibid

duress” to the judgment and clearly stating that I did not give my consent to this court's jurisdiction except under duress; and

11.3 Explain the actual basis by which it has jurisdiction to enforce me (without my consent) to be subject to the jurisdiction Crimes Act 1961, considering that as per my attached Affidavit any references to “The Queen”, “Parliament” and “New Zealand Criminal Laws” are to me lack validity and appear to me to be not relevant to the actual basis of jurisdiction when I do not and have not consented.

Missing Letter

12 The first issue I addressed in person in regards to the Crown's application to withdraw related to where the Crown Solicitor got the information from that I was on bail. I asked for this information specifically, *“I would like to know where she [the Crown Solicitor] got that information from”* and stated that I believed I was at large, *“because I'm not on bail. I'm at large I believe”*.

13 It appears that my question was neither answered nor even addressed, let alone satisfactorily.

Remedy

14 May I please have an answer from the court to this, my first question?

Missing Letter

15 I then asked the court whether it had received the letter from the Crown Solicitor dated 3 December 2021 to me, *“Have you received the letter?”*.

16 The court said, *“No”*, that it had not. *“Is it your letter, is it?”*

17 I then asked the court whether I could furnish it with a copy, which I did – I gave the Registrar a copy of this 'missing' letter with my analysis, comments and my written request written on it.

18 The Crown Solicitor then checked it and approved it for

formal submitting it to the court.

19 In the Crown Solicitor's Notice of Application for withdrawal under s146, under the section entitled, "*List the evidence attached to this application:*" she states that she has filed with the court a letter saying, "*Letter to defendant dated 3 December 2021*".

20 As this is a binary issue (either the court had it or the court did not have it) either:

a) the court erred and it did actually have a copy of this so-called 'missing' letter; or

b) the Crown Solicitor has misrepresented the facts to the court, perhaps deliberately and to my distinct disadvantage.

21 This is a discrepancy that I seek an explanation for please.

Remedy

22 If it be found that the court has a document that it told me that it doesn't have, then I seek:

22.1 A detailed explanation of this court error, and

22.2 A complete digital copy of my entire court file as at 9 December 2021.

23 On the other hand if it be found that the court was indeed deceived by the Crown Solicitor then I seek an explanation of:

23.1 When and how the court found out about this deception;

23.2 What the court has done (and when it did anything) to identify the cause of this deception – i.e. to identify both the person(s) who deceived and the reason(s) for this deception; and

23.3 An explanation of how I can then (without any Crown confession or restitution) be confident that the Crown Solicitor has conducted her investigation and all subsequent matters professionally and without malice from the point that deception of the court was first engaged.

Mischaracterisations

24 This ruling includes two partial summaries that while technically correct or apparently immaterial, mischaracterise reality and omit critical factors important to me.

a) Amendments

25 In Clause 2, of the judgment the DC Judge said of the Crown's position that, "*amendments could be sought*".

26 This abbreviation appears to remove any possibility of public clarity that the Crown Solicitor has either erred or conducted herself unprofessionally, which is my distinct conclusion.

27 Such abbreviation (especially when seen in comparison to the written record and the extent of my [if proven] 'damning testimony' as referred to in my Affidavit) could potentially be seen as a judicial coverup.

Remedy

28 Please detail these amendments in sufficient detail to answer my question posed to the court, "... *she wishes to change. I would like to know why*", and that it can be publicly seen that:

28.1 The Crown Solicitor believes that (as she said) "*In terms of evidential sufficiency [she considers that] the charge of theft is established*"⁵ i.e. that I did commit the crime of theft, and

28.2 That the Taumarunui Police Prosecutor's (David Gray) charging of 'Obtaining by Deception' was, in her considered opinion after having "*review[ed] the file*"⁶, an error.

b) License

29 In Clause 3, of the judgment the DC Judge referred to my Private Investigator's License as only, "*his license*", however I specifically explained to the Court that I was, "*a licensed private investigator*".

5 Crown Solicitor Letter, 3 December 2021

6 Ibid

30 Referring to simply “a license” fails to explain reality to future observers fully and could give the impression that the Court may wish to minimise these events.

Remedy

31 Please clarify and correct this description to detail that it is my “Private Investigator's” license that is important to me.

Tense

32 This ruling includes two tense errors that mischaracterise reality or omit critical factors.

a) Taking Steps

33 In Clause 3, of the judgment the DC Judge said of the existing civil claim that, “*he is taking steps*”.

34 This statement truncates and potentially mischaracterises an important point that I explained to the court in great detail when I said, “*I have a Disputes Tribunal claim before the Court in Taumarunui **which was issued prior to this charge being issued***”.

35 I further clarified this by saying “*I have Jacqui Lowndes ... on standby holding aside the Disputes Tribunal issue ...*”

36 I explained the significance of this timing issue when I said, “*It is bad faith conduct to interfere and determine an issue that is already before the Courts*”.

37 This point, that the matter was already before the [civil] court is downplayed with the use of the present tense (even though use of the present tense is technically correct).

Remedy

38 Please change this present tense to include the past tense and the fact that this attempted prosecution occurred AFTER I had commenced civil litigation as I explained to the court in person.

a) Now Civil

39 In Clause 3, of the judgment the DC Judge said of the Crown's position that, *"this is **now** essentially a civil matter"*.

40 The use of the word "now" is ambiguous as it could mean that 'from the Court's perspective it is now seen as a civil matter' or it could imply that a change in circumstances has occurred, i.e. that I was charged correctly but something is now different.

41 I have always maintained that the matter is and has always been a civil matter, indeed as per my attached Affidavit, the first thing I advised the Police who attended was that the matter was a civil matter.

42 Furthermore, I advised the Court of this very point quite clearly and strongly, taking direct issue with the Crown Solicitor's statement of fact that *"the [disputed] property has returned to its rightful owner"* when I said, *"That is incorrect. That's a factual – factually incorrect statement ... That is incorrect. I am the rightful owner ..."*.

43 There has been no change in circumstances that I am aware of (nor that I have been advised of) since the charging was initiated by the Taumarunui Police that have altered the civil nature of this matter.

Remedy

44 Please correct or clarify the use of the word "now" by explaining that this change has only been from the Court's perspective and not that there has been any actual change in circumstances that justifies use of the word, "now" in the context of any material change of circumstances.

15 Questions

45 In Clause 3, of the judgment the DC Judge said of the 15 questions that, *"related to why the Crown solicitor has sought to*

7 Crown Solicitor Letter, 3 December 2021

withdraw the charge”.

46 This statement is factually incorrect.

47 No discussion of the nature of these 15 questions is in the transcript which (except for one minor case of possible word transposition, from “*Is it*” to “*It is*”) appears to me to be accurate.

48 Early on, I did ask the court to answer one question, “*I would like to know the reason that she has said in writing ... that the charge of theft is established,*” but this had no direct relation to the 15 questions.

49 I do not recall hearing the Crown Solicitor make this statement or claim and it does not appear in the transcript, thus it appears to be an error, likely an incorrect assumption on the part of the DCJ.

50 The 15 questions were supplied to Jacinda Hamilton, Crown Solicitor in writing on the morning of 19 November 2021, long before her letter of 3 December 2021;

51 As per my Affidavit, I believe the very reason she issued this letter as she did was actually because of my 15 questions and that the decision was made on the morning of 19 November 2021 to “pull the charges” and to formulate the letter as she issued on that date in conjunction with another person.

52 I have never supplied the 15 questions to anyone other than the Crown Solicitor, nor have I spoken to any one other than the Crown Solicitor about them, certainly not to the courts or judiciary to date.

53 This incorrect assumption is a material one and therefore an important one that may have ramifications for the entire decision to order an Acquittal under s.147.

54 This is especially the case when this ruling was made in contradiction to the wishes of both the Crown Solicitor (who wanted the charges withdrawn) and the Defendant (who wanted discovery completed before having to address the matter).

55 I have attached an Affidavit that details the specific questions for the record however I note that I asked the court very clearly in

writing to *“Please: ANSWER 15 QUESTIONS FIRST – THEN I WILL CONSIDER [the] FACTS & DECIDE MY RESPONSE”*⁸.

56 It is my submission that as per my analysis in my Affidavit the bulk of the 15 unanswered questions are based on the so-far disclosed evidence and they are therefore primarily evidential in nature.

57 It is my submission also that both an Acquittal under s147 and withdrawal of charges under s146, before obtaining clarification of the full facts are inappropriate actions in order to dispense justice – in essence I as well as a judge are asked to perform a judgment utilising only partial information.

58 I would note that while I am self-represented, I am cognisant that reversing a decision of Acquittal on Appeal may result in a trial but (depending on the answers I receive to the 15 questions) a trial may be a good thing and may be necessary in order to dispense justice.

59 I also note that:

59.1 I do not believe that it is an accident that the Crown Solicitor has avoided addressing the 15 questions;

59.2 My Affidavit also makes clear my belief (as I identified in court in person when I said, *“...Jacinda Hamilton says that she has she has now reviewed the file. I don't believe that”*, is clearly a falsehood or an admission of professional incompetence (or worse).

59.3 This is especially obvious as I explain in my Affidavit, in the light of s219.3, *“In this section, taking does not include obtaining ownership or possession of, or control over, any property with the consent of the person from whom it is obtained, whether or not consent is obtained by deception”*⁹, her primary witness states that he gave me the goods *“I told Dennis*

8 Handwritten on the bottom of the copy of Jacinda Hamilton's 'missing' letter provided to the court, CAPS reproduced as per the original

9 Crimes Act, s219 (3)

*if he could get rid of it, he could have it*¹⁰;

59.4 My Affidavit confirms that based on reasonable application of simple logic, that on or about the same day that she received the 15 questions she spoke with Taumarunui Police Prosecutor, David Gray and then secretly agreed to “withdraw the charges” at that time; and that

59.5 No consideration has [yet] been given to compensation for the filing of false criminal charges and that Police bad faith conduct has yet to be addressed, neither have the substantial commercial losses for me resulting from this misconduct.

Remedy

60 Please:

60.1 Reverse the ruling of 9 December 2021 that I be acquitted, pending:

60.2 An order that the Crown Solicitor answer the 15 Questions I asked her on 15 November 2021; and set the pre-trial matters down for a second hearing where this matter can be considered properly with the full evidence at hand.

Invalid Basis for Acquittal

61 The Defendant thanks the DCJ for recognising that this matter is (and IMHO always has been a civil matter) however the Defendant does not believe that an Acquittal under s146 without the full evidence available or without the evidence used being tested, is justice (especially when the Crown Solicitor has explicitly advised the court that she believes that a crime has been committed, “*In terms of evidential sufficiency, I consider that the charge of theft is established*”¹¹ and did not agree to the acquittal).

62 As matters currently stand, my untarnished professional reputation of decades, rests upon a DCJ's assessment that the [largely hidden] written word of a Crown Solicitor is less worthy than

10 Clause 10. Statement of Kevin Morris, 17 July 2021

11 Crown Solicitor Letter, 3 December 2021

the voice of a single person accused of a Category 3 offence standing before a judge effectively saying "It's all BS, your Honour!".

63 As explained in my Affidavit, in the context of many months of personal and business upset as well as financial loss, the very strong possibility that I am a victim of Police bad faith conduct; subject to false charges (certainly the nature of the charges disputed within the authorities themselves); the clear appearance of Crown malpractice if not conspiracy and that I am a prolific author, blogger and Licensed Private Investigator in the process of writing and publishing a book, "Corrupt Cops UNMASKED!!", I do not consider that an Acquittal under s147 achieves my goal of clearing my name.

64 I write here seeking reconsideration to avoid the necessity of an appeal to the Court of Appeal.

65 I also seek that this Memorandum be viewed as an appeal, or as an application or an extension of time as appropriate in light of the required timeframes so that if necessary (with the Christmas period interruptions) I am able to formulate an appeal to the Court of Appeal within the 20 working days from this court's ruling.

66 I am available for teleconference or for in person appearances (even at short notice) as the court so requires.



.....
Signature of Dennis Arthur Smith
Appellant