

three years on the indecency charge and one year on the possession charge. The terms are to be served concurrently.

[2] He appealed to the Court of Appeal both against convictions and sentence. That appeal was dismissed on 9 May 2013. He applied to this Court on 19 January 2014 for leave to appeal against the Court of Appeal judgment.² On 20 February 2014, this Court granted the appellant leave to bring a further appeal against his conviction on the indecency charge only.³ The approved ground of appeal is whether s 144 of the Crimes Act 1961 criminalises offending as a party. The Court will hear the appeal on 17 June 2014.

[3] On 29 May, the appellant applied for bail pending determination of his appeal. I am determining this application as a single Judge under s 28 of the Supreme Court Act 2003. As the proceedings against the appellant were instituted before the Criminal Procedure Act 2011 and associated amendments to the Bail Act 2000 came into force, the provisions of that Act as it stood prior to 1 July 2013 apply to this bail application. Section 70 of the Bail Act authorises the Court to grant bail.

[4] As the appellant is in custody under a conviction which he is appealing, the Court is required by s 14 of the Bail Act not to grant him bail unless satisfied, on the balance of probabilities, that it would be in the interests of justice in the particular case to do so. Section 14(3) stipulates matters that the Court may take into account. They are the apparent strength of the grounds of appeal, the length of the sentence, the time until the appeal is heard, the personal circumstances of the appellant and his family, and other relevant considerations. The overall policy of the section is that there is a presumption against the grant of bail to an appellant serving a sentence of imprisonment under a conviction or sentence subject to appeal. The presumption may however be displaced, and bail granted in the Court's discretion, where that course is in the interests of justice. The onus of satisfying the Court that bail is in the interests of justice lies on the appellant.⁴

² The delay in bringing this application was not the fault of the appellant.

³ *LM v R* [2014] NZSC 9.

⁴ Bail Act 2000, s 14(2).

[5] In this case, I have considered written submissions on the legal question raised by the appeal. The matter is not a clear cut one. As well, it is neither practicable nor desirable at this point that I reach a tentative conclusion on the strength of the appellant's argument on the legal point on which the appeal turns.

[6] As to other relevant considerations, the effective position is that the appellant has been in custody since his conviction, serving his term of three years imprisonment for the indecency offending. He has already served approximately 80 per cent of his sentence. If his appeal is successful, the outcome will be nugatory unless bail is granted. The appellant has also filed an affidavit referring to various personal circumstances relating to the considerable burdens he faces in prison.

[7] On the other hand, his appeal will be heard within two weeks and the Court is likely then to be in a position to assess the apparent merits of the legal argument on which his appeal is based.

[8] The most important considerations to my mind are that the strength of the appeal is not apparent at this point and the hearing of it is imminent. These factors indicate that the case is not one for departure from the general statutory policy. Overall, the appellant has not persuaded me that it is in the interests of justice to grant him bail prior to hearing the appeal.

[9] This application is accordingly dismissed.

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