



COURT OF APPEAL OF NEW ZEALAND

TE KŌTI PĪRA O AOTEAROA

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***Dallison v R* [2023] NZCA [2023] NZCA 282**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Summary

Today, suppression orders that have prohibited publication of the name, occupation, address, and identifying particulars of Judge Jane Farish as a person connected to Mr Dallison have expired.

The Court of Appeal has heard the appeal of Mr Ian Dallison against a High Court judgment that revoked the District Court suppression order that prohibited publication of the name, address, occupation, and any other details that might lead to the identification of his romantic partner, Judge Jane Farish. In the same judgment, the Court of Appeal also heard two fresh applications for name suppression made by Judge Farish under ss 202 and 205 of the Criminal Procedure Act 2011.

Both Mr Dallison and Judge Farish alleged that suppression ought to continue on the basis that publication would create a real and appreciable risk of endangering the safety of each of them

respectively. The Court has found that the threshold of endangerment has not been met. The Court dismissed Mr Dallison's appeal and declined both applications made by Judge Farish.

Background

A Mr Dallison's offending

The appellant, Mr Dallison, pleaded guilty to charges of attempted murder and wounding with intent to injure, and three representative charges of unlawful possession of pistols, restricted weapons and magazines. On 28 April 2023, he was sentenced to an effective term of six years and ten months' imprisonment by Isaac J in the High Court at Christchurch.

Mr Dallison was previously a senior and respected member of the medical profession, in private practice in Christchurch as an ophthalmologist. However, due to financial difficulties, he became indebted to his landlord, one of his victims, who eventually brought bankruptcy proceedings against him. A hearing of the bankruptcy petition was scheduled to take place on 4 August 2022.

On 3 August 2022, Mr Dallison used Google Maps to ascertain the location of the victims' home. In the evening, for a period of 20 minutes, Mr Dallison's cell phone polled in the suburbs where the victims resided. Mr Dallison was declared bankrupt on the morning of 4 August 2022.

At about 6.45 pm on the evening of 4 August 2022, Mr Dallison placed nine firearms and 167 rounds of ammunition into his motor vehicle. Several of the firearms he had with him on the evening of 4 August were weapons he could not lawfully possess. Mr Dallison then travelled towards the victims' home, stopping at a petrol station to purchase batteries necessary to make one of his firearms capable of firing.

On arrival, Mr Dallison parked a distance from the victims' home, before arming himself with a pistol and spare ammunition. Mr Dallison entered the victims' home at 7.30 pm through the main door into the kitchen, where the victims were both eating dinner.

Mr Dallison then fired the pistol at the first victim intending to kill him. The first round narrowly missed his head, lodging in the door frame over his right shoulder. After shifting aim and pulling the trigger a second time, from approximately two-and-a-half metres distance, the firearm jammed and the round did not discharge.

After both victims rushed at Mr Dallison, a violent struggle ensued for control of the firearm. During the fight, Mr Dallison used his finger to gouge one of the victim's eyes; an injury that has caused lasting damage to his eyesight. Mr Dallison also pistol-whipped the second victim four to five times to the back of her head, wounding and concussing her. Neighbours were able to intervene and restrain Mr Dallison after hearing the second victim's screams for help.

B Other relevant facts

Mr Dallison had known Judge Farish for nearly 28 years. She was introduced to him through her late partner Mr Mayberry. Although Mr Dallison and the Judge were romantic partners, they never lived together and kept quite separate houses.

[REDACTED]

[REDACTED]

C Procedural background

Mr Dallison was initially granted name suppression in the District Court. At his second appearance on 19 August 2022, Mr Dallison did not seek to renew suppression of his own name, instead seeking suppression of his connection to Judge Farish under s 202(2)(c) of the Criminal Procedure Act 2011. It was emphasised by his counsel, Ms Beaton KC, that suppression was sought by Mr Dallison, and not Judge Farish, on the basis that publication of Mr Dallison's close background with Judge Farish would endanger his safety while in custody. In oral argument, Judge Davidson of the District Court had said that the order would not be permanent but omitted to specify this in his oral judgment.

On 11 November 2022, Isac J of the Christchurch High Court delivered a judgment revoking the suppression order made in the District Court. The Judge had found that, as the term of the suppression order had not been specified, the order had permanent effect. Nevertheless, the Judge found that he had the ability to review the order and revoked it. As Mr Dallison satisfied the Judge that he intended to appeal, Isac J made an interim order to the effect sought, as required by the Criminal Procedure Act.

Prior to his sentencing, Mr Dallison had appealed against Isac J's judgment. The Court of Appeal heard the appeal on 31 May 2023, together with two further applications for suppression made successively by Judge Farish under ss 205 and 202 of the Criminal Procedure Act.

The Judgment

A The appeal

In assessing whether an order should be made under s 202(2)(c), the Court undertook a two-stage inquiry. First, the Court had to establish that there was a real and appreciable likelihood that publication would endanger Mr Dallison. Second, if this threshold was met, the Court had to balance the nature and extent of the risk to Mr Dallison against the need for open justice.

As to **endangerment**, Mr Borich KC for Mr Dallison submitted that the threshold test had been met, as publication of Mr Dallison's relationship with Judge Farish would create a real, appreciable and ongoing risk to his safety. Publication of the connection would leave Mr Dallison an obvious target for retribution, intimidation and manipulation in prison.

The Court held that the threshold had not been met. It is a fundamental obligation of the state, which relies on imprisonment as a tool of penal policy, that those in prison must be kept safe. The courts rely on the safety of the prison system when sentencing offenders to prison. There was no evidence that Mr Dallison had been subject to any threat to his safety while in prison: all that had been proffered was that there would be a risk that fellow prisoners would take action against Mr Dallison because of his relationship with a judge. It was clear to the Court that prison authorities were aware of his potential vulnerabilities, and had taken steps to ensure his safety.

As to **discretion**, the Court did not consider it necessary to address in detail the discretionary considerations which weighed against suppression. However, the Court recorded its view that there are strong reasons not to order suppression in these circumstances. Those reasons are founded on the strength of the public interest in all the circumstances surrounding the commission of a violent crime involving the use of weapons by a respected professional person who owned a substantial collection of guns. There must also be a public interest in the fact that Mr Dallison has sought to suppress the fact of his connection to a member of the judiciary on grounds of personal safety.

B Judge Farish's applications

The Court embarked on the same two-stage process as in Mr Dallison's appeal.

The Court acknowledged that publication of personal information might be objectionable to a connected person, however, the possibility of unwanted media attention could only be avoided

if one of the relevant grounds for suppression was made out. In this respect, a judge can obviously be in no better position than any other citizen.

First, the Court assessed [REDACTED]

After considering the evidence, the Court was not satisfied that publication would create a real and appreciable risk of endangerment to Judge Farish's safety. [REDACTED].

The Court also observed that, in any event, it would not have exercised its discretion in favour of suppression. The Court accepted unreservedly that Judge Farish had nothing to do with Mr Dallison's offending, and [REDACTED]. However, there was a strong public interest in the relationship between Judge Farish and Mr Dallison and [REDACTED].

The Court held there must be a strong public interest in all the surrounding circumstances. Those circumstances include the way the justice system responds to issues involving name suppression for defendants and connected persons within the framework established by Parliament. The fact that the connected person is a judge can hardly be said to reduce the legitimate public interest in all the surrounding circumstances. Rather, it adds to it.

For all reasons discussed, the Court declined both of Judge Farish's applications.