

EDITORIAL NOTE: PERSONAL/COMMERCIAL DETAILS ONLY HAVE
BEEN DELETED

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2015-085-010776
[2016] NZDC 18681**

NEW ZEALAND POLICE
Prosecutor

v

LOSI FILIPO
Defendant

Date of Ruling: 21 September 2016

Appearances: no submissions from Prosecution
written submissions on behalf of Defendant

RULING OF JUDGE B DAVIDSON:
**[Requests under Rule 6.8 Criminal Procedure Rules 2012 for access to
documents and/or court file by Newshub and complainants]**

Background

[1] On 15 August 2016 I discharged the defendant without conviction under s 106 Sentencing Act 2002 on the 4 charges he faced¹. I gave full reasons which have been transcribed and released to all the above requestors, together with a copy of the summary of facts and charging documents.

The requests

[2] It is not entirely clear what documents the requestors wish to view and copy over and above those already released.

¹ The charges, of injuring with reckless disregard, assault with intent to injure and assault on a female, related to an incident in central Wellington in the early hours of Sunday 11 October 2015,

[3] Newshub seeks “*permission to view a copy of the court file of Losi Filipino, including any summary of facts, charge sheets, suppression details and/or witness statements and Judges notes ...* “. Newshub goes on to say:

The material is sought to enable [it] as a media outlet to better and more effectively carry out its legitimate and important function as the eyes and ears of the public.

[4] The 4 complainants seek “*release of documents and files by the courts*” as “*we are the victims in this case, we need this information to help us move forward and we feel as the victims that it should be within our rights to be allowed to access it and allow us to understand the entire proceedings ...*”.

[5] For completeness I note the 4 complainants also seek access to the court file of Sam Filipino, the defendant’s brother, who also faced charges arising from the incident. I did not deal with Sam Filipino. If the complainants wish to pursue that aspect of their request it will need to be referred to the judge who dealt with his case.

The law

[6] I do not propose to review the law in any detail.

[7] In short under Rule 6.8 any person, other than a party, can request access to documents and the court file. Rule 6.9 provides for certain access restrictions; none are applicable. Rule 6.10 sets out the matters I must take into account. I can grant access in whole or in part and subject to any conditions I consider appropriate. Access means to search, inspect, or copy under court supervision.

Submissions

[8] No response has been received from the police.

[9] On behalf of the defendant Mr Sainsbury opposed access beyond the documents already released. He noted:

- there had been no appeal by the police against my decision;

- my decision summarised the key points made in the various documents;
- the court proceedings were open yet none of the requestors had chosen to attend;
- there are privacy issues for the defendant attaching to many of the documents;
- it was important for the orderly and fair administration of justice that defendants be encouraged to place relevant information before the court to assist judicial decision-making; and widespread release of personal information could restrain this in future.

The documents themselves

[10] There are a significant number of documents on the court file. In summarising them I discount those already released and documents presumptively available in other ways, eg. victim impact statements to which the complainants already have access.

[11] The other documents are:

- memorandum of counsel for the defendant dated 20 April 2016 (for case review hearing the next day);
- defendant's application for discharge without conviction dated 13 June 2016, with supporting affidavits of defendant and [name deleted] and a number of supporting references/letters;
- prosecution submission dated 15 June 2016 in opposition to discharge without conviction;
- affidavit of [name deleted] dated 10 August 2016;
- prosecution sentencing memorandum dated 15 August 2016;

- a bundle of at least 14 references (some of these are reproduced as exhibits to the affidavit material).

Decision

[12] I have read again all the submissions, affidavits and references in the light of the matters I am required to take into account under Rule 6.10.

[13] Firstly, a general observation. The matter is concluded and the defendant's fair hearing rights no longer need protection.

[14] Relevant considerations, it seems to me, are:

- The orderly and fair administration of justice;
- confidentiality and privacy interests;
- open justice.

[15] In reality only 2 aspects count against access – whether allowing access carries a general risk that other defendants will be less than frank with disclosure of material to the court and whether there are privacy concerns for either the defendant, the affidavit deponents or the signatories to letters and character references.

[16] As to the first, I do not consider access to information in this case carries any real risk that it might dissuade future defendants from placing relevant information before a court. After all, in the normal course of events, most defendants and their lawyers are at pains to place mitigating material before the court.

[17] As to the second, there is little that might require genuine privacy protection.

[18] However, for privacy reasons access to 2 documents should not be permitted. Each contains specific material about the defendant, private to him, when he was much younger. [details deleted] I have isolated these documents and placed them in a sealed envelope. Access to them is denied.

[19] I grant the requestors access to the balance. In my view access is justified having regard to the orderly and fair administration of justice and the principle of open justice.

[20] The documents bundled together under the title "*Access allowed*" can be inspected by the requestors under supervision of a court officer. I do not allow copying. It seems to me that inspection is sufficient to meet each of the requests.

[21] Under Rule 6.10(1) I direct that the requestors are not to contact the defendant, the affidavit deponents, or the letter signatories without permission of the court.

B Davidson
District Court Judge