

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

No. _____

IN THE MATTER of an application
for release on bail
pending appeal

BETWEEN RONALD MAYER PATON
of Auckland, Inmate

APPLICANT

A N D NEW ZEALAND POLICE

RESPONDENT

MEMORANDUM OF COUNSEL IN SUPPORT OF NOTICE OF APPEAL

MAY IT PLEASE YOUR HONOUR :

THE FACTS:

The accused has been convicted of the following offences:

- (a) That between the 15 April 1993 and 21 April 1993, at Auckland, together with DAMIEN MITCHELL GRANT falsely and deceitfully impersonated PHILLIP MACK PICOT the owner of 200,000 Natural Gas Corporation Holdings Limited convertible notes and thereby obtained a share certificate for those 200,000 convertible notes as if being the true and lawful owner (Count 1).

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- (b) That between the 31 August 1992 and 19 April 1993, at Auckland, together with Damien Mitchell Grant forged a document namely a Security Transfer Notice in respect of 200,000 convertible notes issued by Natural Gas Corporation Holdings Limited (Count 2).
- (c) That between 15 April 1993 and 21 April 1993, at Auckland, together with Damien Mitchell Grant knowing a document namely a Statutory Declaration and Indemnity for Lost Certificates to be forged caused Registry Managers New Zealand Limited to act upon it as if it were genuine (Count 3).
- (d) That between the 15 April 1993 and 21 April 1993, at Auckland, together with Damien Mitchell Grant knowing a document, namely a Security Transfer Notice to be forged, caused Registry Managers New Zealand Limited to act upon it as if it were genuine (Count 4).
- (e) That on or about 22 April 1993, at Auckland, together with Damien Mitchell Grant with intent to defraud used a document capable of being used to obtain a pecuniary advantage namely a Securities Transfer form for 15,000 Natural Gas Corporation Holdings Limited convertible notes for the purpose of obtaining for himself or for any other person a pecuniary advantage (Count 5).
- (f) That between 3 May 1993 and 7 May 1993, at Auckland, together with Damien Mitchell Grant, with intent to defraud used a document capable of being used to obtain a pecuniary advantage, namely a Securities Transfer form for 100,000 Natural Gas Corporation Holdings Limited convertible notes for the purpose of obtaining for himself or for other persons a

pecuniary advantage (Count 6).

- (g) That between the 3 May 1993 and 7 May 1993, at Auckland, together with Damien Mitchell Grant, with intent to defraud used a document capable of being used to obtain a pecuniary advantage, namely a Security Transfers form for 24,200 Natural Gas Corporation Holdings Limited convertible notes for the purpose of obtaining for himself or any other person a pecuniary advantage (Count 7).
- (h) That between 3 May 1993 and 7 May 1993, at Auckland, together with Damien Mitchell Grant, with intent to defraud used a document capable of being used to obtain a pecuniary advantage, namely a Securities Transfers form for 5,800 Natural Gas Corporation Holdings Limited convertible notes for the purpose of obtaining for himself or any other person a pecuniary advantage (Count 8).
- (i) That between 3 May 1993 and 7 May 1993, at Auckland, together with Damien Mitchell Grant, with intent to defraud used a document capable of being used to obtain a pecuniary advantage namely a Security Transfers form for 15,000 Natural Gas Corporation Holdings Limited convertible notes for the purpose of obtaining for himself or any other person a pecuniary advantage (Count 9).
- (j) That between 3 May 1993 and 7 May 1993, at Auckland, together with Damien Mitchell Grant, with intend to defraud used a document capable of being used to obtain a pecuniary advantage namely a Securities Transfers form for 13,500 Natural Gas Corporation Holdings Limited convertible notes for the purpose of obtaining for himself or any other person a pecuniary advantage (Count 10).

VI

(k) That between 11 July 1993 and 7 October 1993, at Auckland, wilfully attempted to prevent the cause of justice by purchasing, and subsequently using an ocean-going vessel to enable LEO MAN ZALKALNINS to leave New Zealand in order to avoid criminal proceedings pending against him (Count 11). !

SUBMISSIONS:

1. THAT two days after the verdict was delivered the officer in charge Detective Constable TONY EDWARDS disclosed to the defence a police file which related to a fraud matter. This fraud occurred some six months prior to the PICOT fraud and involved the fraudulent transfer of share certificates in the name of a complainant THORNE. This fraud was effected in a manner almost identical to the Picot fraud in the following respects :

- (i) That the complainants' shareholding information was obtained through the breaking into of post office boxes.
- (ii) That the shares were transferred through a bogus statutory declaration for loss into cash deposited into a PSIS savings account.
- (iii) That the funds so deposited were withdrawn at regular intervals by use of an ATM money machine card.

2. THAT as a result of this information being disclosed to the defence the various instruments used to effect the Thorne fraud have been sent for handwriting analysis and comparison with reference to the signature samples of DAMIEN GRANT and LEO ZALKANINS. These

handwriting comparisons confirm that it was these two persons, together who were involved in the Thorne fraud. It does not involve the prisoner PATON.

3. THAT in the light of this new evidence emanating from the Thorne fraud file not disclosed to the defence during the time of Ronald Paton's trial it is submitted that such omission may well have material affected the manner in which the jury dealt with the evidence of Damien Mitchell Grant in assessing their verdicts against the prisoner Paton.

4. THAT to convict the prisoner Paton on the Picot fraud charges depended entirely upon the credibility of Damien Grant in his contention that the originating Picot fraud documents coupled with the PSIS account in the name of ORD had been produced by Paton at a meeting with Grant at Richardson's Tavern on or about January 1993.

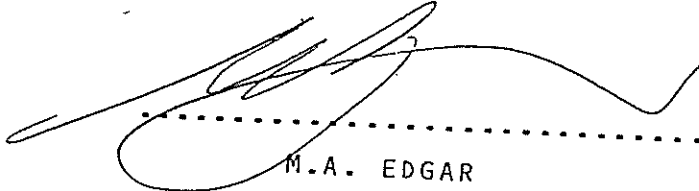
5. THAT now as a result of the Thorne evidence coming to light it is apparent that Damien Grant and Leo Zalkanins together were engaged in a similar fraud commenced some months before the fateful meeting referred to by Damien Grant in his evidence, and more particularly referred to in paragraph 4 above.

6. THAT had the defence been able to cross-examine Grant at trial in respect of this new evidence it would certainly have given the jury compelling evidence in assessing the credibility of Grant's testimony thus now rendering the jury's verdict in respect of the Picot fraud unsafe and open to criticism.

7. THAT in the light of this new evidence it is submitted that the prisoner Paton be granted bail pending an appeal from this Court to the Court of Appeal against conviction in respect of Counts 1-10 inclusive.

VIII

8. THAT it is understood the Crown consents to the fact that the new evidence is compelling and relevant and may have materially affected the jury's verdict and that in these circumstances it is submitted with respect that bail pending appeal, although exceptional, ought to be granted to the prisoner in this particular case.


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M.A. EDGAR
Counsel for the Applicant