

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. M /92

UNDER the Summary Proceedings Act
1957 and The Crimes Act 1961

BETWEEN ANTHONY ROBERT FOOTE of
 Christchurch, Prison
 Inmate

Applicant

AND THE CROWN

Respondent

AFFIDAVIT OF A.R. FOOTE
IN SUPPORT OF NOTICE OF
MOTION TO SET ASIDE
GUILTY PLEAS

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TAKE NOTICE on day the day of
1992 counsel for the above-named Applicant WILL MOVE this
Court at Christchurch FOR AN ORDER that the pleas of
guilty to seven counts of indecent assault be set aside
UPON THE GROUNDS:

1. The Applicant maintains he is not guilty of any of
the offences to which he has pleaded guilty.
2. That at the time he entered the pleas of guilty and
gave instructions to his counsel he was mentally *an*
disturbed to such an extent that he was unable to
make rational decisions.
3. *That at least one of the complainants has recanted
his complaint to independent third person.*
4. Appearing in and by the affidavit sworn and filed
herein by the Applicant.
5. That it would be just and equitable in all the
circumstances.

DATED at Christchurch this day of 1992

.....
Counsel for the Applicant

TO: The Registrar, High Court, Christchurch
AND TO: The Crown Solicitor, Christchurch

THIS Notice of Motion is filed by Philip Humphrey Brett
Solicitor for the Applicant whose address for service
is at the office of Messrs Wood Marshall, Solicitors, 293
Buckley Street, (PO Box 400) Christchurch.

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I, ANTHONY ROBERT FOOTE of Christchurch, Prison Inmate,
make oath and say as follows:

1. THAT on or about the 23 September 1992 I was arrested
by the police and charged with sodomy (this charge
has since been withdrawn). I have been in custody
ever since.
2. THAT on or about the 29 October 1992 I pleaded guilty
to seven charges of indecent assault and I was
committed to the High Court for sentence on the
3 December 1992. I have since been further remanded
for sentence to the 10 December 1992
3. ALTHOUGH I have acknowledged to the police in my
interview with them that indecencies did occur with
some of the complainants and I personally signed the
pleas of guilty, I now wish to withdraw that plea
upon the basis that my confession is untrue and that
no crimes occurred as alleged.
4. DURING my interrogation and during all subsequent
Court procedures I was mentally and emotionally
unable to make informed statements to the police or
indeed to my counsel.
5. I have been assessed by the Sunnyside Forensic
Psychiatric Service (Dr Ryan). It is only since my

FE. [Signature]

pleas have been entered that I have become properly functional. I attach and mark with the letter "A" a report from Dr Ryan.

6. MY decision to change plea should not reflect in any way upon my counsel Mr Barker or Mr Bunce his associate. The fact is that I gave them instruction at a time when I was dysfunctional and unable to emotionally or mentally stand up to the allegations which were being hurled at me. I wanted to plead guilty notwithstanding my innocence.
7. I have a valid defence in that I say that the allegations are untrue at worst and highly exaggerated at best. I now wish to defend the charges laid against me.
8. I believe that some of the complainants have made false complaints with a view to claiming Accident Compensation.
9. I know that one complainant, Jason Kerr, has instructed Mr Collin, a solicitor, to advise my counsel that his statement to the police is incorrect. I knew his statement was incorrect but nevertheless pleaded guilty to a charge involving an indecent assault upon him. I did so out of a misguided sense of protection at a time when I was not thinking or acting normally.
10. IF my pleas of guilty are not set aside, I will be punished for offences I have not committed and to that extent there will be a miscarriage of justice.

SWORN at Christchurch
this 9th day of December
1992 before me:

Jonathan Etkin
(JAN EATON)
A Solicitor of the High Court of New Zealand

YOU WALK TOMORROW

YOU DIE TOMORROW

KIDFUCKER CUNT

Mr Stan Barker

Barriater for R. L. Foote

Peter Crossan

T.V. 3

Private Bag 4726

Addington

Christchurch

15-12-92

This letter was to go to Stan Barker, but

the opportunity didn't arise

at Foote's sentencing for him to receive it.

DEP

Dear Sir,

I am the cell-mate of your client, Anthony Foote, and have been since he entered here. I have been held back here since my sentencing in October in order to (hopefully) forestall any suicide attempt on his part, - a job I have been successful in to date, in spite of several occasions when he has been "on the brink." I have had all the inside information on his case and cannot understand why he was not advised to continue with his "change of plea." I do know, as you should, that Foote's mental state has been totally unstable and erratic the whole time he has been here. Certainly he has had the occasional period where his thinking has been rational, but at no time in my opinion has he been able to deal with more than one decision at a time, and under stress he hasn't even been able to absorb information to make any "informed" decision as to his future.

Basically, I wish to know, what the hell goes on, - when someone in his mental state, who is obviously unbalanced (and unstable), to function fully, and is pressured all ways to "make a decision and stick to it" (quote from D. CROSSAN and M. BURKE - PRISON WORKERS SPEAKING TO FOOTE IN MY PRESENCE), is told repeatedly that he has then made the wrong choice. This is the third "crisis time" I've had to face. The first was after he pleaded guilty, while still maintaining his innocence. The second was when he was told he had "no show" of changing his plea, and instead of looking at one to two years jail, as told by the police; he was in fact looking at three to five years. Now tonight, he has just been told he's done it again, and could be looking at up to seven years, when, if he had gone ahead with his "change of plea," his innocence could indeed have been proven.

The other question I wish to raise is why the ~~past~~ psych. nurse from Sunnyside, - Margaret Harroway

who has visited Foote on many occasions, has been told, by her superiors, ~~the~~ (presumably), that she is not to get involved in, nor give evidence of, Foote's mental state. She does know his full condition, - unlike psychiatrist Archata Ryan, who spoke to Foote once only, and then for no more than 20 minutes, - (yet she wrote a report), - and then again, her visit was conducted only just after Foote came in here. She has not seen him since, and I am sure, has no real idea of the true state of Foote's mind.

Sir, this whole case is bloody ridiculous, - and I cannot believe all that has been happening in it. It strikes me as a "black comedy of errors," and if in this is the state of the legal system today, what hope does anyone have for keeping sane and out of jail in the future.

Yours faithfully,

J. G. Denham.

DONALD GEOFFREY DENHAM.

P.S. While I have no medical or psychiatric qualification I have lived with Foote, in the same cell for the past three months and we have spent around 20 hours a day or more locked up together. Therefore, I believe if anyone would know if Foote was disturbed or not, - I would, - and his is - badly so. He has (in fact) hardly left the cell, even for exercise, and has lost over 3 stone in weight due to his fear and depression: - fear of spaces larger than the cell, the ridicule, the possibility of fights; and the depression that has been with him for years, and which has built up enormously in his time here.

J.G.D.