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A Brief Look at the Approach of the New Zealand Courts to Intellectual Disability – Padua 1

Overview of “T”s case




2004
Prison

Family
Court
Transfer to
IDC


Seduced by
Caregiver
Girlfriend

Secure
Care


Parole Board
Feb 2007
Prison




Habeas Corpus
1 - Feb 2007



Habeas Corpus
2 - April 2007



Habeas Corpus
3 - May 2007



Family Court
May 2007



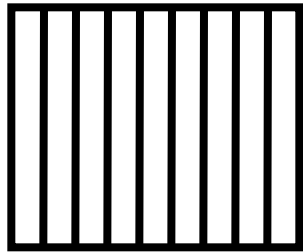
Court of Appeal
May 2007



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“T” has an IQ of 65 and a mental age of around 8 years old.

Charged with armed robbery of a bank.

Pleads Guilty.

District Court Judge recognising he has an intellectual disability but not knowing the extent says he is the ring leader of the Robbery and sentences him to 3 years 6 months in prison.



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Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

World first but when introduced as a bill had power to lock up intellectually disabled persons who had not committed a crime.

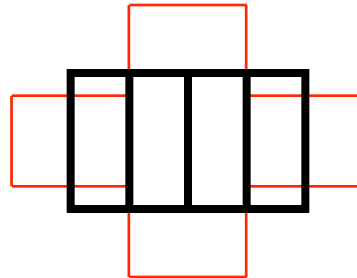
Submissions made that title should be changed to Intellectual Disability (Imprisonment without Trial)
Surprisingly the bill was amended dropping non criminal detainment.



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“T” seduced by caregiver to live with her in a sexual relationship.

When relationship breaks up he is transferred to secure care.

Ex-girlfriend caregiver reports him to the police for threatening language.

Sentenced to 40 hours community work.



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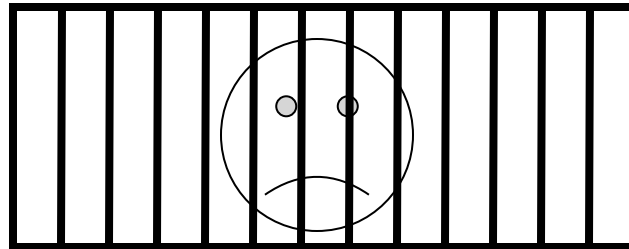
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Probation then seeks recall to prison.

Chairperson of Parole Board at ex-parte hearing grants interim recall (up to 30 days) on the basis he is a danger to the public (threatening language?!).

The author of this paper becomes “T”’s counsel.





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A Brief Look at the Approach of the New Zealand Courts to Intellectual Disability – Padua 6

High Court
Feb 2007



1st Writ of habeas corpus sought to release “T” from Prison back into secure care.

Judge says raises an issue of general importance – Relationship between IDCCRA, Corrections Act, and Parole Act needed.



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High Court
April 2007



Second Writ of Habeas Corpus sought on grounds:

1. Original sentencing process unfair and detention arbitrary.
2. October 2006 review had no reasons. *Gajcsi v. Hungary*
ECHR 3 October 2006
3. After 26 January 2007 when health assessor reported care no longer required no application for release made until March 2007.



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High Court
May 2007



Third Writ of Habeas Corpus sought on grounds that:

1. Original Compulsory Care order made at telephone conference unlawful.
2. High Court asked to investigate position.



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Family Court

May 2007



Application to cancel care order should have been made shortly after 26 January 2007. But not made until mid March. Original April hearing adjourned until 15 May 2007 to get second assessors report.

Hearing result “T” to be released on 29 May 2007.

Counsel not appointed as counsel under IDCCRA (ie didn’ t get paid).



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Court of Appeal



22 May 2007

Appeal of second and third habeas decisions and by implication the Family Court decision.

Essence of the decision could not use habeas corpus but had to use criminal appeal (which was filed 22 April 2007) was supposed to be sufficiently fast and still not set down to be heard as at 23 June 2007 contrary to *van Glabeke v. France ECHR 7 March 2006* and *Gundogan v. Turkey ECHR 10 October 2002*.

Judgment issued 28 May 2007 just before his release so impossible to appeal to the Supreme Court.



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What Next?

Lots!



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A Brief Look at the Approach of the New Zealand Courts to Intellectual Disability – Padua 12

What is going to happen next?



Appeal Criminal conviction including not a fair hearing and systemic incompetence of counsel and sanism.



Sue for damages for retransfer to prison and challenge compatibility of IDCCRA with NZ Bill of Rights Act (but Section 4 NZBORA)



UN Human Rights Committee.