C.A. 90/71

IN THE COURT OF APPEAL OF NEW ZEALAND

THE QUEEN v. HENRY TAHU

Coram: North P.
Turner J.
Woodhouse J.

Counsel: Jeffries for Appellant
Neazor for Crown

Hearing and Judgment: 1 November 1971

ORAL JUDGMENT OF THE COURT DELIVERED BY NORTH P.

The appellant appeared before Henry J. in Auckland on 9 September last, having been convicted on a plea of guilty of the offence of rape, and he was sentenced to 8 years' imprisonment. He has now appealed against his sentence.

In accordance with our usual practice where a substantial sentance has been imposed, we thought it right to grant the appellant legal aid and he has had the benefit of a careful argument from experienced counsel, Mr Jeffries, who has said everything that possibly could be said in support of the appeal. Mr Jeffries really makes two points; first, that the learned Judge was in error in alluding to what might happen at the hands of the Prisons Parole Board. Counsel referred to an English case where it was said that the sentencing Judge should not, in fixing the quantum of punishment, have any regard to what might later happen by the Parole Board exercising its right to admit a prisoner to parole in certain circumstances if it thought it was desirable to do so. We do not take the view that the words used by the Judge are to be interpreted as

Mr Jeffries invited us to interpret them. The learned Judge obviously had been asked by counsel to consider the question of the possible rehabilitation of the prisoner and the Judge was really doing no more, in our view, than saying that when regard was had to his past list together with the circumstances of this crime, the Court cald not allow the question of the prisoner's possible rehabilitation to enter into the sentence the Judge thought it right to impose.

The second ground was that the sentence was excessive in itself, and Mr Jeffries invited us to consider the matter from two angles; first, could the sentence have been higher? - and he submitted the answer must have been "no". The second question was, could it have been lower? - and he submitted that the answer could properly have been "yes". Well, of course the question of the appropriate sentence is always very much a matter for deliberation by the Judge who undertakes the responsibility of sentencing, and this Court will only interfere if it is satisfied that the learned Judge approached the matter either on a wrong principle, or has imposed a sentence that obviously is too high.

Now, in this case we have a man of 36 years of age; a man of intelligence apparently; a Maori who has a long list of offences of burglary and the like, who broke into this house at night, terrified the occupant - who was an old lady, a widow of 76 years - attacked her, hit her on the head, throttled her and then raped her. Well, this is the sort of offence - if any serious regard is to be had to the maximum of 14 years - which is obviously in the category where any Judge might well consider whether he should not impose a sentence very nearly equivalent to the maximum. Henry J., a very experienced Judge, thought that this was a case where he ough

to impose a sentence of 8 years' imprisonment and for our part we do not think that it could even be said that the sentence might not indeed have been higher. We think it was a proper sentence in all the circumstances and even allowing for the three matters referred to by Mr Jeffries, namely (i) that it was not a premeditated case; (ii) a plea of guilty had saved the old lady the ignominy and perhaps even the shame of having to appear in Court; (iii) his past convictions did not include sexual crimes: we are satisfied nevertheless that the sentence was in every way a proper one. We are grateful to Mr Jeffries for the efforts he has made as assigned counsel to have the matter carefully examined. We have no wish to interfere with the sentence and the appeal accordingly is dismissed.