

S.A. 65/72

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THE QUEEN v. WAI TUA

Counsel: Turner J.
Richmond J.
White J.

Hearings: 6 November 1972

Counsel: Cliphart for Appellant
Ellis for Crown

Judgment: 22 November 1972

JUDGMENT OF THE COURT
Delivered by Richmond J.

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The appellant, together with Wai Taifiti and Lou Hope Martin, was jointly indicted that on 6 March 1972 at Turangi, being armed with an offensive weapon namely a .303 rifle, he did rob the Turangi Service Station. The three men were also charged with converting a Ford Zodiac car and with unlawfully interfering with three other motor cars. They all pleaded guilty and were all sentenced by Henry J. to 6 years' imprisonment on the major count of aggravated robbery. On the other counts they were convicted and discharged.

The appellant sought leave to appeal out of time and supported his application with written submissions. We thought it desirable to grant him legal aid and Mr Cliphart was assigned. He has subsequently made extensive enquiries both from the appellant and also from counsel on whose advice the appellant pleaded guilty.

In the first place the appellant seeks leave to appeal against conviction. We have carefully considered everything that Mr Cliphart was able to put before us, but we

find in the circumstances under which the appellant pleaded guilty nothing which could justify this Court in taking a course which will amount to allowing him to reverse his plea after sentence. He had advice from counsel, and it cannot be said that there was any misunderstanding as to its effect, or as to the effect of the plea. Neither do we find in the facts of the crime itself, as proved by the depositions, nor in the account of them in an affidavit tendered to us by appellant, anything which would warrant any interference with the conviction. Leave to appeal against conviction is refused accordingly.

The appellant also seeks leave to appeal against sentence. No point in this respect is taken by Mr Ellis in so far as the appeal is out of time. Because of the careful and extensive enquiries made by Mr Clphert there is a good deal of information before this Court which was not before Henry J.. As a result we are satisfied that the involvement of the appellant in the violence which was used towards the petrol station attendant was considerably less than that of his co-offenders. Having regard to this, and also because (unlike his co-offenders) the appellant had no previous convictions for violence, we are of opinion that some reduction in his sentence is called for. Leave to appeal against sentence is granted accordingly.

The appeal against sentence is allowed, the sentence quashed, and a sentence of 4 years' imprisonment is substituted.

Solicitors for the Appellant: Clphert & Bemboldt, Wellington