

THE QUEEN

1x

v.

CARL DAVID JOYCE

Coram: Turner P.
Richmond J.
Macarthur J.

Hearing: February 7th 1972

Counsel: Pethig for Appellant
Neazor for Crown

ORAL JUDGMENT OF THE COURT DELIVERED
BY TURNER P.

We do not think it necessary to call upon you,
Mr Neazor.

This appellant came before McMullin J. and a jury at Auckland in November last, facing eight counts of false pretences, forgery, and uttering. On the first five of these he was acquitted by the jury, but he was convicted on count No. 6 obtaining the sum of \$225 by means of a false pretence that a certain car was his own property and on counts 7 and 8, relating to the forgery and uttering of a cheque purporting to be signed by D. R. Brown for the sum of \$31.60. He was sentenced by the learned Judge to twelve months' imprisonment on each of the three counts of which he was found guilty, the sentences being concurrent.

He now appeals against both conviction and sentence. The grounds which he stated in his notice of appeal, which he appears to have prepared himself, being somewhat obscure, we thought it proper to assign Counsel to examine the matter on his behalf, and to make such submissions as he could

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therefrom. Mr Pethig was entrusted with this task, and came before us having made his customary careful examination of the case which he appeared to support.

The appeal as filed appeared to rest principally, if not entirely, upon an application which appellant proposed to make to call a number of witnesses whom he named, who would, he said, be able to give evidence of some promise that the moneys owing on the car would be or had been repaid. Before us, Mr Pethig felt unable to pursue any such submission. He informed us that he had diligently attempted to consider the evidence proposed to be led from all the persons whose testimony was put forward in the notice of appeal as relevant. Some, he said, whom Mr Hawk, the Counsel appearing for appellant at the trial, had actually interviewed, had proved on such an interview to be unable or unwilling to say anything which would assist appellant materially at all. Others had disappeared, and did not respond to letters forwarded to them at the addresses nominated, the correspondence being returned by the Post Office. Mr Pethig said that he could not submit he could be assisted by any adjournment in this regard. He had done all that could reasonably be done to investigate whether or not the witnesses' evidence could assist the appellant, and he had come to the conclusion that he could not make any helpful submission in this regard. It further appeared, and indeed this is fairly evident from even a casual perusal of the notes of evidence, and the notice of appeal, that really no other ground can be put forward in support of the appeal; and we have come to the conclusion, without calling upon Mr Neazor, that it is inevitable that the appeal against conviction should be dismissed.

As to the sentence, the sentence imposed by the learned Judge was a very moderate one having regard to the nature of the offences, and the record of the appellant as demonstrated by the Probation Officer's Report does not encourage this Court, any more than it could have encouraged the learned trial Judge, to regard the case as requiring or supporting any exceptional extension of mercy towards this offender. He has been before the Court on numerous occasions in the past on charges of false pretences, and other offences involving dishonesty, and has been imprisoned on several previous occasions. We see no reason at all to consider interfering with the sentence imposed, and the appeal against sentence is likewise dismissed.