IN THE COURT OF APPEAL OF NEW ZEALAND

Special Consideration

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C.A.61/78

THE QUEEN

v.

ERIC ROY PRATT

Coram - Richmond P.
Woodhouse J.
Richardson J.

Hearing - August 8, 1978

Counsel - C.M. McGuire for Crown
D.S. Castle for Appellant

Judgment - August 8, 1978

ORAL JUDGMENT OF THE COURT DELIVERED BY RICHMOND P.

In this case Eric Roy Pratt has applied for leave to appeal against a sentence of preventive detention. He was charged with indecent assault on a girl aged 9 years. He pleaded guilty and was committed to the Supreme Court for sentence.

He had previously been convicted on two occasions of crimes of a sexual nature committed against young persons under 16 years of age. His first such conviction was in 1964 and his second in 1969. On the latter occasion he was convicted on two separate counts which apparently involved the same girl who was aged 15 years and six months but was somewhat retarded and was an epileptic. He was thus qualified in terms of s.24 of the Criminal Justice Act 1954 as a person who could be sentenced to preventive detention. It must be noted however that there was a substantial interval between his offences in

1969 and the present offence committed in April of this year.

We do not propose to describe the facts of the present offence. In appellant's favour it can be said that he did not use any particular degree of violence and that he surrendered himself to the Police and made a full confession in the matter. He has had a number of other convictions mainly of a minor nature relating both to crimes against property and crimes against the person. Alcohol has consistently played a dominant part in the commission of these offences. The longest period of imprisonment to which he had been sentenced was a period of two years imposed in June 1974 for indecent assault. This particular offence was not of a kind which would be a qualifying offence as being within the definition of "sexual offence" contained in s.24 (6) of the Criminal Justice Act 1954.

The sentencing Judge, who had before him a report from the Secretary for Justice and also a psychiatric report, expressed himself as satisfied that it was expedient for the protection of the public that the appellant should be sentenced to preventive detention and he imposed that sentence accordingly. The Judge did not advert in the course of his remarks on sentence to the possibility of sentencing appellant to a substantial finite period of imprisonment as an alternative to a sentence of preventive detention.

In the case of R. v. Ward [1976] 1 N.Z.L.R. 588 this Court discussed the difficult problem as to how far

it is permissible for an ordinary finite sentence to be increased for the protection of the public against the activities of an offender whose previous record shows a proclivity for some particular type of offending. Ward's case shows that considerations of that kind may properly be taken into account but within certain limits which are not altogether easy to define with precision. At p.591 it is said -

> For these reasons the law has sought to preserve the preventive aspect being given too much importance. The controlling principle which it has developed to prevent it taking charge in a dominant way is that a reasonable relationship to the penalty justified by the gravity of the offence must be maintained. The desirability of prevention must be balanced against that gravity.

It may be that in the present case the sentencing Judge felt that if he were to impose a finite sentence he could only do so within the limits discussed in Ward's case. We therefore think it of importance to say that the principles there discussed are not applicable in a situation where an offender is qualified for a sentence of preventive detention but where the sentencing judge feels that a finite sentence arrived at in accordance with normal principles would not be adequate for the protection of the public. We would not wish it to be thought that in such a situation a sentencing judge has no alternative but to impose a sentence of preventive detention. It would be permissible for him to select a finite sentence which would be less severe in its effect on the offender than a sentence of preventive detention but which at the same

time would be of greater severity than could be justified merely on the principles discussed in Ward.

Having said as much we return to the circumstances of the present case. A sentence of preventive detention is of a drastic nature. Section 26 of the Criminal Justice Act 1954 provides that a person sentenced to preventive detention shall be so detained for not less than seven years from the commencement of the sentence. It is only after seven years that the Parole Board has jurisdiction to recommend the release of such an offender but under s.33A (7) of the Criminal Justice Act 1954 the Board shall not do so unless of the opinion that if the offender is released he is not likely to continue to commit sexual crimes. On the other hand the Parole Board has a much more extensive jurisdiction in relation to offenders sentenced to finite sentences of five years and upwards. In the present case, as we have said, there was a long interval between the present offence and the previous closest qualifying offences. As we also mentioned, the longest sentence previously imposed on the appellant was one of two years. It is a vast step to take from such a sentence to a sentence of preventive detention in the particular circumstances of the present case. We have come to the conclusion that those same circumstances, which of course include the facts of the particular offences, plainly did not warrant taking such a step in the present case.

The application for leave to appeal is granted and the appeal is allowed. The sentence of preventive

detention is quashed and in lieu thereof the appellant is sentenced to imprisonment for seven years commencing as from the date of the previous sentence, that is 19 May 1978.

C. Richmond J.

Solicitors for Crown: Crown Law Office, Wellington

Solicitors for Appellant: Castle and Castle, Wellington