

(A1)

IN THE COURT OF APPEAL OF NEW ZEALAND

C.A.132/78

THE QUEEN

v

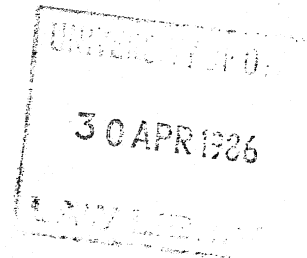
KEVIN MOANA JARDEN

Coram - Woodhouse J.
Cooke J.
Richardson J.

Hearing - 11 April 1979

Counsel - D.C. Fitzgibbon for Appellant
W.R. Flaus for Crown

Judgment - 11 April 1979



ORAL JUDGMENT OF THE COURT DELIVERED BY RICHARDSON J.

Kevin Moana Jarden was found guilty by a jury in the Supreme Court at Christchurch on five counts, one of arson and four of burglary. On the arson count he was sentenced to four years' imprisonment and on each count of burglary he was sentenced to twelve months' imprisonment, the sentences to be concurrent. There was a further charge, one of threatening to kill a police officer the day after the fire, to which he pleaded guilty in the Magistrate's Court and was committed to the Supreme Court for sentence where he was sentenced to nine months' imprisonment, again concurrent with the other sentences. He now applies for leave to appeal against conviction on the charges of arson and burglary and against the sentences imposed on the charges.

~~Broadly speaking the grounds of appeal against conviction are (i) that certain evidence was wrongly admitted at the~~

to question her with a view to showing that she had made prior inconsistent statements. We are unable to say whether or not the copy of the affidavit was improperly obtained. There is no evidence as to that, no question as to that having been raised at the trial. And the copy affidavit was itself put in as an exhibit in the re-examination of Mrs Jarden by the applicant's counsel.

We turn to the second ground of appeal. It was argued by Mr Fitzgibbon that the verdict of the jury was unreasonable and could not be supported by the evidence. Reference was made to some alleged discrepancies in the evidence. Reliance was also placed on a conflict between the scientific experts to which we have referred and also on other matters of evidence. As we view it these were matters to be taken into account by the jury who saw and heard all the witnesses and had the benefit of addresses by counsel and the summing up by the trial Judge. We are satisfied that there was ample evidence before the jury on which they were entitled to find guilt established beyond reasonable doubt.

Finally, as to sentence Mr Fitzgibbon referred particularly to the sentence of four years' imprisonment imposed in respect of the arson conviction. The applicant is 33 years old and as the sentencing Judge put it, he has an appalling list of previous convictions, but no convictions for anything like arson or wilful damage or violence. The Judge went on to say in his remarks on sentencing that the arson was inexplicable and irrational. But in commenting on the circumstances of the arson itself he emphasised that "quite apart

from the property damage it was the potential danger to life for those who have to fight such a fire which has to be borne in mind and also the fact that this crime of arson is on the increase in the community." In all the circumstances of the case we are unable to say that the sentence was excessive.

The applications for leave to appeal against conviction and sentence are refused.