IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 121/81

THE QUEEN

v.

ALISTAIR ROBERT McGREGOR

Coram: McMullin J. (presiding)
Somers J.
Barker J.

Hearing: 9 September 1981

Counsel: P.D. Green for appellant
W.R. Flaus for Crown

Judgment: 9 September 1981

ORAL JUDGMENT OF THE COURT DELIVERED BY SOMERS J.

This is an application by Alistair Robert McGregor for leave to appeal against a sentence of 9 months imprisonment imposed on him in the District Court at Auckland on 21 July 1981 on a charge of burglary to which he had pleaded guilty on arraignment.

The evidence taken at the preliminary hearing establishes that a company called Commercial Storage Limited, for whom the applicant worked as a cleaner and storeman, had for some time been concerned with its inability to balance the actual stock in its warehouse with its records of goods

received. It suspected theft and notified the police who made enquiries. It so happened that a stocktake was carried out on Friday 20 February 1981 of cassette radios held in the warehouse and in the early hours of Saturday morning, 21 February, the police and the company secretary visited the premises again and once more counted those radios reaching the same tally. The police had put in a silent alarm. It went off about 15 minutes after midnight, that is to say on Sunday 22 February, and a search then showed 4 stereo radios, 2 television sets and 12 cassette radios had been removed to lower floors of the premises and tied together in obvious preparation for their removal from the premises. The applicant and his co-offender were found nearby. The applicant in his statement to the police said he had been involved in an actual burglary on the Friday but that when he approached the premises early on the Sunday morning had formed the impression someone had already been there and accordingly ran away.

The Judge did not accept this and neither do we. The evidence clearly shows that the activities of the applicant and his co-offender involved the intended removal of the items mentioned.

The applicant is aged 32 years. He had a conviction for burglary in his youth which can be disregarded and in June 1978 he was sentenced to 6 months periodic detention on 3 charges of theft as a servant. He is clearly a man of considerable intelligence and some industry. It is apparent that he has been gambling heavily and on this

occasion was motivated in part at least by heavy financial losses he had sustained in connection with a fishing venture. An important feature of the case is that he was an employee of the occupant of the premises and clearly used the knowledge he had gained of the premises and the business in order to commit the offence.

The Judge considered the case was an appropriate one for imprisonment. He considered a non-custodial sentence but concluded that as the applicant had not seemed to have benefited from the previous sentence of periodic detention that form of sentence was not appropriate.

Mr. Green has said all that could be said on behalf of the applicant. The principal ground he advanced in support of the appeal was that the sentence was excessive when compared with that imposed on the co-offender. The latter too had pleaded guilty and was sentenced to pay a fine of $600.

But there are differences in the circumstances of each case. The co-offender had been fined in November 1980 for theft of property under the value of $100 and some 10 years before had been fined on charges connected with a series of smuggling offences. His offending was not therefore characterised by those features of recent dishonesty which affected the applicant. But more importantly, there is the degree of involvement of the two men. The District Court Judge regarded the co-offender as less deeply involved in the commission of the actual offence. We consider that view is fully justified

by the evidence. The applicant's employment at the premises was obviously a most important feature of the whole affair.

We are of opinion that there is in this case no disparity between sentences of such a nature as would warrant any intervention by this Court. The sentence in our view was entirely appropriate to the circumstances.

The application for leave to appeal is dismissed.

Solicitors for the Appellant:
Macalister, Mazengarb, Protheroe & Co., Lower Hutt.

Solicitors for the Crown:
Crown Law Office, Wellington.