27/3

NZLR X

IN THE COURT OF APPEAL OF NEW ZEALAND CA.259/85

241

THE QUEEN

NOT RECOMMENDED

V

PETER TIFA TALE SU'A

Coram Cooke J (presiding)
McMullin J
Somers J

Hearing 24 March 1986

Counsel J. Haigh for appellant
Mrs Anne Gaskell for Crown

Judgment 24 March 1986

ORAL JUDGMENT OF THE COURT DELIVERED BY COOKE J

This is an application for leave to appeal against sentence. The applicant was found guilty after trial before a District Court Judge and jury on a charge that on or about 13 and 14 August 1984 he received from a person or persons unknown video equipment, stereo equipment, photographic equipment and Persian carpets to a total value of $18,324 before then obtained by a crime, knowing at the time of receiving the items that they had been dishonestly obtained. They were found in property which he had recently rented of which he had been in possession for only about twelve hours. His account of the matter was that he was storing these

items for an acquaintance and that account carried the implication that the acquaintance may well have been the thief. It is evident that the jury must have reached the conclusion that the applicant was aware that the items had been dishonestly obtained.

He had in July of the same year finally been released after serving a sentence of 2 years 6 months imprisonment for robbery. Unfortunately he had a long list of previous convictions before that. He is a man of 37 and his convictions go back nearly twenty years, many of them being for offences of dishonesty. He has favourable reports from his present employer for whom he has worked both before the trial and since, the District Court Judge having released him on bail pending the appeal. The sentencing did not occur until October 1985 but no criticism is made by counsel for the applicant of the delay, which has been associated with the applicant's decision to plead not guilty and difficulties in Auckland in bringing the case to trial earlier.

The sentencing Judge had the provisions of the Criminal Justice Act 1985 very much in mind. He did not recite them verbatim in his observations, but he summarised them by saying that the Criminal Justice Act now makes it very clear that the Court should as far as it possibly can or reasonably can avoid imposing terms of imprisonment, particularly in relation to non violence matters. That was how he approached the case and obviously properly so. He found

himself compelled to the conclusion that the only appropriate sentence was not a community based one or a monetary one but a term of imprisonment. In the result he imposed what was manifestly a lenient term of imprisonment of only eight months on each count, the terms to be concurrent.

In our view there is no justification for this Court interfering with that sentence. In terms of s.6 of the 1985 Act the Judge was entitled to take the view that the special circumstances of the offender were such that any other than a sentence of imprisonment would be clearly inappropriate. In addition to the long record already mentioned there was the fact that for a number of his previous non custodial sentences there had been corresponding convictions for failing to comply with their terms: four convictions for breach of probation, the most recent in 1981, and one for failure to comply with the terms of a periodic detention order, the latter going back to 1974. The Judge did not overstate the effect of those convictions, simply referring to them as not encouraging, but he did give some regard to that history. He also referred to the accused's getting into serious trouble again immediately upon release from the latest term of imprisonment. He described this as a serious and aggravating factor and again we can see no justification for our taking a different view, even if the applicant was only a caretaker as he claims. In short, while we do not overlook that this man has a good employment report, bearing in mind his age and his history we think that the Judge was fully

entitled to impose the imprisonment that he decided upon and the application must be dismissed.

R B Cooke J.

Solicitors:

Haigh Lyon & Co, Auckland for appellant
Luke, Cunningham & Clere, Wellington for Crown