

24/2

N2LR

NOT
RECOMMENDED

IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 351/87

THE QUEEN

LR17

v.

REGINALD EDMONDS

Coram: Somers J. (presiding)
Bisson J.
Gallen J.

Hearing: 19 February 1988

Counsel: J.Haigh for Appellant
W.R. Flaus for Crown

Judgment: 19 February 1988

JUDGMENT OF THE COURT DELIVERED BY SOMERS J.

On 27 July 1987 Reginald Edmonds was sentenced in the District Court at Auckland to imprisonment for a term of 18 months on a charge of false pretences to which he had pleaded guilty. At the time the sentence was imposed Edmonds was already in prison. He had been sentenced to four years imprisonment in the High Court on 3 July 1987 in respect of a much more serious charge. The District Court Judge rightly considered that in those circumstances he was unable to deal with Edmonds on the charge of false pretences other than by a term of imprisonment which was directed to be served concurrently with the earlier longer term.

On 9 December 1987 this Court quashed the conviction for

the offence on which Edmonds had been sentenced to four years imprisonment and directed a new trial. In the meantime, in August, Edmonds applied for leave to appeal against the sentence of 18 months imprisonment and on 18 December he was released on bail by the District Court pending the hearing of that application.

It is evident from the remarks of the sentencing Judge that, but for the fact that he was already in prison, Edmonds would not have been sent to goal on the charge of false pretences and Mr Flaus who has appeared today for the Crown has told us that a sentence of imprisonment would not have been warranted had he not already been in prison.

We are satisfied from what we have been told and from the material before us that this case was not one which by itself called for a sentence of imprisonment. He has however been in prison since he was sentenced by the High Court on 3 July 1987 and for a further nine days after his first conviction was quashed. It is no longer practicable or desirable to substitute a suitable non-custodial sentence on the charge of false pretences. The appropriate course is to give leave to appeal, allow the appeal, and set aside the sentence imposed on 27 July and substitute for it such term of imprisonment as would have expired on 18 December 1987.

There will be orders accordingly.

Sturges