

IN THE COURT OF APPEAL OF NEW ZEALAND

1798 — Burglary — Appeal against sentence of one year's imprisonment — Previous offending — The appellant had broken into a clothing shop and stolen jeans worth \$8,000 at wholesale. He had wanted money to shout his friends drinks, and had committed the offence possibly while drunk. Relevant factors were the appellant's age (21) and maturity, the fact that he had committed previous offences, including theft, while also being on bail, his inability to make significant reparation, the extent of financial loss to the victims, and the prevalence locally of theft offences. The appeal was dismissed. *R v Andrews* (Court of Appeal, 13 August 1992 (CA 201/92) Eichelbaum CJ, Casey and Henry JJ. Judgment of the Court delivered by Henry J). [3 pp]

12/11/92  
off on bail ✓

CA.201/92

THE QUEEN

12/11/92

v

MARCUS GEORGE ANDREWS

Coram: Eichelbaum CJ  
Casey J  
Henry J

Hearing: 13 August 1992

Counsel: G Anson for Crown  
Yvonne Summers for Appellant

Judgment: 13 August 1992

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**JUDGMENT OF THE COURT DELIVERED BY HENRY J.**

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This is an appeal against a sentence of one year's imprisonment imposed in the District Court on 12 June this year on one charge of burglary.

In the early hours of 17 November 1991 appellant unlawfully broke and entered a clothing shop in Levin and removed approximately 160 pairs of ladies' jeans said to have had a wholesale value of \$8210.00. Some challenge is made to the precise number of jeans which were removed but there is nothing before us which would indicate that the approximate figure given by the Crown would be incorrect. Later that same day appellant sold two pairs of those jeans. He

was later seen throwing from a car coathangers and labels which had been taken from some of the stolen property. He was interviewed by the Police and charged, initially went to trial, but on the morning of the second day of the trial entered a plea of guilty.

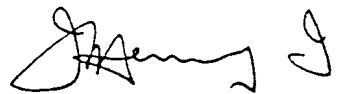
The reasons given for the offending are that the appellant was having his 21st birthday and desired money to "shout" for his friends. It was also claimed that he was under the influence of liquor at the time of the offending. None of the stolen property, other than the two jeans which were sold on the afternoon following the theft, has been recovered and neither have any proceeds from any sale from the theft been recovered.

At the time of sentence appellant was 21 years of age. He was unemployed although he had previously been in various forms of employment. He has previously offended and as Miss Summers pointed out those offences were of a comparatively minor nature although they do indicate reprehensible conduct on his part and it can be noted also that those offences include one of dishonesty, namely theft. It can also be noted that some of that offending occurred whilst appellant was on bail awaiting trial in respect of this matter. For those earlier offences he has been fined and also undergone periodic detention. He has not previously been sentenced to a term of imprisonment.

Miss Summers, although submitting that periodic detention was an alternative available to the sentencing Judge, in this Court responsibly accepts that a sentence of imprisonment on this occasion could not be said to be inappropriate but she did submit that in all the circumstances the term of one year was excessive.

When regard is had to this appellant's background - he is a young man but one of some maturity, he has previously offended including as we have mentioned he has a conviction for theft and he did offend whilst on bail - having regard also to the circumstances of this particular offending and other relevant factors, namely the extent of the financial loss to the victims, his inability to make any significant reparation and, as referred to by the Judge, the prevalence of this type of offending in the district concerned, we are not persuaded that the sentence of one year's imprisonment was outside the range available to the Judge.

Accordingly the appeal must be dismissed.



**Solicitors:**

Cullinane Steele, Levin, for appellant  
Crown Solicitor, Wellington, for Crown