IN THE COURT OF APPEAL OF NEW ZEALAND 13/11 CA 6/92

ORDER PROHIBITING
PUBLICATION OF NAME
OF APPELLANT

LOW PRIORITY

2195

THE QUEEN

v

CRIME APPEAL 6/92

Coram: Eichelbaum CJ
Hardie Boys J
Holland J

Hearing: 3 November 1992

Counsel: Emma Aitken & P J Driscoll for appellant
K Raftery for respondent

Judgment: 3 November 1992

JUDGMENT OF THE COURT DELIVERED BY
EICHELBAUM CJ

On 15 November 1991 the appellant and his co-offender carried out an armed robbery on a security guard who was in the course of collecting takings from a supermarket. The robbery was carefully planned, involving the use of two getaway vehicles which the offenders had converted earlier in the day. The appellant positioned one of the cars and remained ready for a quick escape while his co-offender, disguised and carrying a sawn-off shotgun, carried out the robbery, within sight of the appellant. Having obtained cash and cheques to a total of just over $100,000 the offenders were able to make good their escape. However, when interviewed eight days later the appellant admitted the offence. Having pleaded guilty at an early appearance, on 19 December 1991 he was sentenced to a total of 7 years imprisonment and ordered to pay reparation in the sum of $2,500.

We should briefly record the appellant's personal circumstances. At the time of sentence he was aged 25, seemingly unemployed, and living in a de facto relationship. He had a history of convictions for burglary offences but had not been before the Courts since 1985.

As filed the appeal related to both conviction and sentence but the appeal against conviction has not been pursued and is dismissed. The appeal against sentence is based solely on the appellant's assistance to and cooperation with the police in connection with the offence. That assistance commenced before sentence with the appellant's full admission of his participation and a statement as to the involvement of the co-accused. He also took the police to the site where the firearm used in the robbery had been concealed. The police accept that without his help it would not have been recovered.

The assistance given prior to sentencing is not referred to in the Judge's sentencing remarks and it may be that the matter was not drawn to his attention. However, the bulk of the appellant's help was given later. He appeared as a witness at both the depositions hearing and the trial of the co-offender and the police say that the prosecution rested heavily upon the evidence of the appellant and his sister, but especially that of the appellant himself. The co-offender's trial resulted in his conviction and on 1 July 1992 he was sentenced by a different Judge to 7½ years imprisonment. We do not know for what period the co-offender was in custody prior to sentence and it may be that the starting point before taking time in custody into account was eight years. Even so, given the appellant's prompt plea of guilty and his lesser degree of participation in the planning and execution of the offence, a margin of one year does not appear to reflect their differing positions fully.

The police have stated that the appellant has received a threat on his life with the result that he has been in and is

likely to remain in protective custody in prison. Based on our experience of other such cases it may be that special arrangements of that kind will have to continue for some if not all of the appellant's time in custody with the result that the nature of the sentence he serves may be significantly more severe than would be the case normally.

It is well established that in the public interest and to further the administration of justice the Courts should give due recognition of the value of cooperation of this kind. We recently re-stated the approach in R v Crime Appeal CA 462/91, 19 May 1992 and do not need to repeat it here. The assistance, although confined to a single offence, was critical in relation to that matter. It has been at a cost to the appellant. On the other side of the ledger, the seriousness of his own offending has to be put in balance. Taking all the circumstances into account we conclude that the sentence of 7 years imprisonment should be reduced to 4 years. The appeal will be allowed and the latter sentence substituted accordingly. We make an order for the suppression of the appellant's name. This judgment will be intituled by reference to the number of the appeal only.

Thomas Eichelbaum C.J.

Solicitors:

Crown Solicitor, Auckland