

**LOW
PRIORITY**

IN THE COURT OF APPEAL OF NEW ZEALAND

3/12

C.A.368/92

THE QUEEN

2374

v.

ERIC TE PAA

Coram: Casey J (presiding)
McKay J
Thomas J

Hearing: 27 November 1992

Counsel: J R Eichelbaum for Crown
M Rodgers for Appellant

Judgment: 27 November 1992

JUDGMENT OF THE COURT DELIVERED BY CASEY J

Eric Te Paa pleaded guilty to a charge of aggravated robbery of a service station at Auckland on 10 August 1992 and was sentenced to 9 months' periodic detention on 9 October 1992. He has served six weeks of that sentence. The Solicitor-General applies for leave to appeal against it on the grounds that it was manifestly inadequate and wrong in principle.

The facts are that about 4.20am the respondent entered the service station where the sole attendant was closing up and cleaning the premises. Te Paa was holding an imitation brass revolver and had his head and face covered with a hood and scarf. He threatened the attendant and demanded money. The latter tried to get an iron bar from

behind the counter which he kept for protection but the respondent seized it first and struck him on the head and body, knocking him to the ground and causing cuts and scratches requiring five stitches to the head. He then took \$300 from the till and cheques and left. The attack has had a serious effect on the attendant's confidence. He was unable to carry on that job and although he now has another, he is still fearful of attack and worried about his future.

The respondent, a young man of 20, enjoyed an excellent upbringing and the care and support of family who are held in high regard in the community. He has had no previous trouble. For some months he had been unemployed following the closure of his employer's business and he could not find other work. He lived at home but before this incident he had moved out, that being accepted as the natural desire of a young man for independence. He ran up substantial driving fines in his brother's name through use of the latter's car, and when his father and family remonstrated with him he had resort to this crime in order to raise the money to pay his brother. He was described in the pre-sentence report as an unsophisticated, naive and immature 20-year old, and that accorded with the way his father spoke of him in this Court.

In the High Court the sentencing Judge had the benefit of submissions by family members, whose support was also manifest in this Court, and we received a responsible and persuasive address from his counsel urging us to endorse the leniency shown to this young man by the High Court. There the Judge took into account the fact that he was a first offender; that the robbery was not a carefully planned enterprise; and that he had the advantage of an entirely supportive family - a family which, as Mr Te Paa Snr has told us, has great respect for the law and the justice system. On the basis of that support the Judge took the exceptional step of imposing a sentence of periodic detention instead of the prison sentence which the circumstances so clearly indicated, especially in the light of s5 of the Criminal Justice Act calling for such a sentence when serious violence has been used, unless there are special circumstances of the offence or the offender.

The dominating feature of this offence which cannot be overlooked was the attack on the attendant with the iron bar used by the respondent not in self-defence, but to carry out his resolution to steal money.

We can understand and share the family's grief over the fact that the son whom they love and support has committed such a crime. We appreciate their willingness to help in his rehabilitation and can only commend their efforts which now seem to be bearing some fruit. But the fact remains that a serious crime has been committed and the Court's duty is to administer the law with an even hand and respect the interests of the community which it is designed to protect, as well as the interests of the accused.

Taking into account all that has been said so eloquently on behalf of the respondent, we have reached the conclusion that a prison sentence was called for in this case. Under the guidelines enunciated in similar cases the term would normally be one of 3 years or more, but taking into account the guilty plea, the period of 3 weeks in remand custody, the 6 weeks serving the periodic detention sentence; and reflecting the leniency which the sentencing Judge wished to exercise, we fix the sentence at one of 2 years.

The application for leave to appeal is granted, the appeal is allowed and in lieu of the sentence of periodic detention a sentence of 2 years' imprisonment is imposed.

A handwritten signature in black ink, appearing to read "M. G. Casey". The signature is written in a cursive, flowing style with a prominent initial "M".

Solicitors: Crown Law Office, Wellington