IN THE COURT OF APPEAL OF NEW ZEALAND CA 322/93

THE QUEEN

NOT RECOMMENDED

V

BRUCE SCOTT FARQUHAR

Coram: Richardson J
Hardie Boys J
McKay J

Hearing: 6 September 1993

Counsel: R. Lithgow for Appellant
D Boldt for Crown

Judgment: 6 September 1993

JUDGMENT OF THE COURT DELIVERED BY RICHARDSON J

This appeal is against a sentence of 10 months imprisonment imposed in the District Court at Dunedin on 12 July 1993 on 2 counts of receiving stolen goods.

A sportswear shop in Dunedin was burgled. A large quantity of sports shoes and sportswear was stolen. 5 days later a Police search located a small quantity of the stolen goods and various prices tags from the shop at the appellant's address. He and 2 others were charged with the burglary and were committed for trial. On indictment he pleaded guilty to 2 counts of receiving; one in respect of sports shoes

and the other in respect of other items of sportswear. The count in respect of the sports shoes referred to 85 pairs of sports shoes of various brands. The count in respect of other sportswear included a range of items. The retail value of the goods specified in the receiving counts totalled some $11,000. On his plea of guilty on the receiving counts the burglary charge was not pursued. One of the other 2 persons concerned pleaded guilty and the other was discharged.

Mr Farquhar is 22 years old. He has a number of prior convictions for offences of dishonesty including receiving in 1990 for which he was sentenced to community service, and receiving in 1991 for which he was sentenced to periodic detention. None of that earlier offending had led to sentences of imprisonment but he was still serving another sentence of periodic detention for burglary when he committed the present offences.

The appellant owns his own home and shares the responsibility for the care of his 2½ year old son. He is described in the Probation Report as a capable and reliable worker in the seasonal work in which he has been engaged for some years. He told the Probation Officer that his offending prior to and including 1990 related to excessive alcohol consumption but in recent years greed had been the motivating factor. He acknowledged receiving but denied taking actual possession of goods in the charge relating to the stolen shoes. Notwithstanding his offending history the Probation Officer reporting to the District Court on sentencing accepted that the appellant had a genuine resolve to change his behaviour and believed that his offending lifestyle could be most effectively addressed within the context of supervision with a special condition as to counselling. He accordingly recommended that form of sentence.

In relation to the offending itself the District Court Judge considered it clear that the appellant and the actual burglar were involved together, that there was a degree of organisation in the receiving and a degree of planning in the way in which it was proposed to sell off the goods. Given the amount of the goods involved, the appellant's planning and his previous offending within a short period and regular property offending over the previous 3 years the Judge concluded that a sentence of imprisonment was the only proper course. He accepted that a lengthy sentence was not necessary given that the appellant was a lesser offender both in terms of the value of the goods and in terms of the actual charges he faced. In the result the District Court Judge considered a sentence of 12 months imprisonment was appropriate and then allowed 2 months for the time spent in remand custody to arrive at the 10 months sentence which he imposed.

In support of the appeal Mr Lithgow accepted that imprisonment was not an inappropriate sentence for this offending by this offender. The submission is that the effective term of 12 months imprisonment was excessive in all the circumstances, Mr Lithgow putting particular emphasis on the effect of a term of that length on the appellant's employment opportunities on his release.

We are satisfied that a shorter term of imprisonment for this offender for this offending would properly meet the requirements of s7 of the Criminal Justice Act 1985 that a sentence shall be as short as in the opinion of the court is consonant with promoting the safety of the community. Certainly the District Court Judge was entitled to conclude that the appellant had been involved in the planning of the matter even though found in physical possession of only a small quantity of the goods stolen. Clearly the offending seriously and adversely affected the owners and staff of the burgled premises. Clearly the Judge was entitled to take account of the appellant's repeated offending in determining that a sentence of imprisonment was

required. However, he accepted that a lengthy sentence was not necessary. And a sentence as long as 12 months would on the material provided to this court seriously prejudice the employment opportunities of the appellant in his regular seasonal work with the obvious re-offending risks and the implications for rehabilitation. In short, that aspect of the interests of justice would not be served by a sentence of that length .

On our overall assessment of the matter we are satisfied that a lesser sentence which we fix at 9 months as a first sentence of imprisonment for this offender for this offending is required to meet the statutory prescription that the sentence in such a case be as short as is consonant with promoting the public safety.

The appeal is allowed. The sentence of 10 months is quashed and in lieu a sentence of 7 months imprisonment, calculated on the footing that the effective sentence is 9 months less 2 months for time spent in remand custody, is imposed.

Solicitors
Crown Solicitor, Wellington