LOW PRIORITY

IN THE COURT OF APPEAL OF NEW ZEALAND 23/9 CA231/94

THE QUEEN

1466

v.

SEAN PATRICK BRODERICK

Coram: Eichelbaum CJ
Casey J
Holland J

Hearing: 13 September 1994 (at Christchurch)

Counsel: R W Raymond for Crown
D C Ruth for Appellant

Judgment: 13 September 1994

JUDGMENT OF THE COURT DELIVERED BY EICHELBAUM CJ

Sean Patrick Broderick appeals the sentence of 7 years' imprisonment for two charges of aggravated robbery imposed in the High Court in the following circumstances. Armed with a shotgun and disguised by means of a balaclava he entered a suburban dairy, pointed the gun at the female shopkeeper and demanded money. He obtain $130 in cash and also extorted a wallet from one of the two customers in the shop at the time, although in the event it seems he left the wallet behind. The appellant claimed the gun was unloaded but when it was later found in the appellant's car there were cartridges with it. The appellant was intercepted by the police soon afterwards and within two days entered a plea of guilty.

The appellant is a single man with an unfortunate history. Although only 26 he has been sentenced to imprisonment on at least eight separate occasions, often for multiple offending. Indeed, he has spent most of his life from age 16 onwards in prison, his convictions including two previous aggravated robberies and one robbery. Nevertheless he is not without ability and following his last release succeeded in keeping out of trouble for several months. Unfortunately he again succumbed to the demands of his drug and alcohol dependency. Clearly, failing some way of breaking the cycle, he is doomed to become completely institutionalised.

One must view with concern the history of an almost unbroken pattern of offending and imprisonment, and if the sentencing jurisdiction available to the Court offered any constructive alternative it would merit consideration. The option of a cumulative term of supervision is only available if the prison sentence is no more than 12 months - see s47 Criminal Justice Act 1985. As was recognised during argument, given the gravity of the offending, realistically this possible outcome must be put aside. The Court can only note, for the benefit of the prison authorities, its strong view that unless while in prison this appellant receives effective help with his anger management and substance abuse problems, he will pose a continuing danger to the public on his release.

There remains the question of the length of the term imposed. In the course of his sentencing remarks the Judge noted that this Court had recently said that the starting point for the most serious category of aggravated robbery should be increased to 9 or 10 years. The Judge could not have meant that this case fell within the most serious class: under the ***Moananui*** classification plainly it is within the second group rather than the first. However, there were significant aggravating factors; the use of the shotgun which may well have been loaded, and the threatening of and robbing a customer as well as the proprietor. Further, in

exercising his discretion as to where to place the sentence within the appropriate range, the appellant's previous record was such as to compel the Judge to give significant weight to the protection of the public. There were mitigating factors as well, but they were taken into account. Although the resulting sentence is stern we regard it as within the range available in the circumstances. Accordingly the appeal is dismissed.

Thomas J. Thomas CJ

Solicitors: *Crown Solicitor, Christchurch*