NZR

NOT RECOMMENDED

IN THE COURT OF APPEAL OF NEW ZEALAND 3/6 C.A. 63/94

SUPPRESSION OF PUBLICATION OF NAME AND DETAILS LEADING TO IDENTIFICATION

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v Accused (CA 63/94)

~~CRIME APPEAL 63/94~~

Coram: McKay J
Holland J
Thorp J

Hearing: 26 May 1994

Counsel: G L Turkington and Neela Vallabh for Appellant
D J Boldt for Crown

Judgment: 26 May 1994

JUDGMENT OF THE COURT DELIVERED BY McKAY J

The appellant was charged with the armed robbery of a bank on 4 March 1994. He pleaded guilty on 15 March, and was remanded to the High Court for sentence. On 18 March he was sentenced to 6 1/2 years imprisonment, and ordered to make reparation in the sum of $1000. His appeal is against the sentence of imprisonment.

The robbery was planned by the appellant and his two co-offenders. They checked out the security measures used by the bank staff. The appellant was involved in procuring a single barrelled shotgun, and himself cut it down with a

hacksaw blade so that both barrel and stock were sawn off. On 3 March all three went to another bank which they intended to rob, but they abandoned the idea because of the number of people present. On 4 March the appellant was assisted in disguising his appearance, and was furnished with a bicycle which he used to travel to the bank. He gained entry by waving at a teller who released the bank's security door. He then drew the shotgun out of the bag he was carrying, and while detaining the lone customer with one arm, he confronted the two female tellers with the gun. He obtained $6,990 in cash and cycled back to one of his associates, with whom he left his clothing, the shotgun and the money. He received $1000 for committing the robbery. He was located and interviewed on 9 March, and admitted the facts as outlined.

The appellant is a young married man aged 22 years. He has previous convictions for burglary in 1987 and 1989. He is said by his parents to be easily led, and they attribute his gullibility and his need to please to his dependency on cannabis. These factors and his involvement with the co-offenders, who are his cousins, led to his participation in a series of burglaries eventually leading to the armed robbery. His parents and wife remain supportive, and his wife was willing to pay reparation of $1000.

It was accepted that the shotgun was not loaded. That is a mitigating factor, in so far as it reduces the potential risk of serious injury, but it does not make the offence any less frightening for the victims. The female customer who was in the bank has suffered particularly from delayed shock, disturbed sleep and nervousness, and her family has also been affected. So too have been the two bank tellers.

The Judge referred to a number of mitigating factors. Although involved in the planning and playing the key role in the actual robbery, the appellant was not

the prime mover. The gun was not loaded. The appellant was and is supported by his family and whanau, which is a positive sign for rehabilitation. Of particular significance was the early plea of guilty, and the assistance given to the police, including a willingness if necessary to give evidence against the other two offenders.

The Judge referred to recent decisions of this Court which have suggested that higher levels of sentencing for this offence are now appropriate compared with those considered in ***R v Moananui*** [1983] NZLR 532, and adopted a starting point of around 9 years. That was reduced to 6 1/2 years to allow for the plea of guilty and the cooperation with the police. The Judge considered it was not appropriate to allow any further reduction because of the pivotal role played by the appellant in the offence.

Sentencing on the present charge took place on 18 March. On 26 April the appellant appeared for sentence in respect of six other charges to which he had pleaded guilty, two being charges of theft in December 1992 and the other four being in respect of burglaries on various dates in February 1993. He was sentenced to 18 months imprisonment, to be served concurrently with his sentence of 6 1/2 years for armed robbery. The Judge who sentenced the appellant on these other charges clearly had regard to the totality of his offending, and to his pleas of guilty and cooperation with the police. Although the sentence in respect of these other charges is not in issue on the present appeal, Mr Turkington realistically accepted that this Court could not interfere with the sentence for the armed robbery without having regard to the totality of the offending which has been met by concurrent sentences.

The prevalence of armed robbery has led to higher levels of sentencing for such offences, particularly in cases involving banks where real weapons have been

used which have been loaded. A starting point of 10 years has not been regarded as inappropriate. In the present case, the fact that the weapon was not loaded takes it out of the worst category, although the victims are not to know whether the gun is loaded or not, and the fear and shock which they suffer is not diminished. At the same time, we must have regard to the totality of the offending, including the six other offences of theft and burglary. Taking these into account, Mr Turkington accepted that he could not argue against the starting point of 9 years adopted by the Judge. Mr Boldt for the Crown accepted that 9 years would be at the very top of the range for a robbery involving an unloaded weapon, and was within although perhaps at the lower end of the range if the other offences are taken into account.

It was common ground that there should be a reduction to allow for the pleas of guilty, which were made at the earliest possible stage. Indeed, this case is unusual in that only 14 days elapsed between the commission of the offence and the imposition of sentence. The victims of the robbery were spared the need to give evidence, and the sometimes lengthy period of stress and anxiety which that can impose. There has also been the significant saving in police time and in expense to the Crown. Mr Boldt accepted that if the appellant were allowed a reduction of 2 years for his plea of guilty, this would mean that a further credit of only 6 months had been allowed for the further assistance given to the police. He informed us that the police acknowledged that the appellant's assistance had been invaluable, and the Crown was not opposed to this Court making some further reduction in the sentence.

This Court has on a number of occasions affirmed the principle that assistance given to the authorities should, in the public interest, be recognised in sentencing. Such assistance is important in ensuring the conviction of co-offenders or other criminals. The giving of such assistance inevitably involves risk to the particular offender, and also to his family. The police witness protection scheme

can reduce that risk, as can steps taken by the prison authorities for the protection of prisoners, but these steps can make imprisonment more restrictive and hence harsher than for the ordinary prisoner. It is in the public interest that such assistance should be encouraged and the potential risks recognised. In the present case, we were informed that the assistance provided by the appellant has continued since the early date of his sentencing, and that he remains willing to assist by giving evidence for the Crown at the trial of his co-offenders, which has yet to take place.

Having said that, the fact remains that this was a serious crime of a kind which is all too prevalent in our society, and which must be met with a sentence which marks society's condemnation. Taking all these factors into account, but in particular the early pleas of guilty and the considerable assistance to the Crown, which has been continued since he was sentenced in the High Court, we are satisfied that a further reduction in sentence is justified.

The appeal will be allowed, the sentence of imprisonment quashed, and a sentence of 5 years substituted. The order for reparation will remain.

An order was made in the High Court suppressing publication of his name or any details which might lead to his identification, and this extended to any comments about his willingness to further assist the police. That order will be continued.

Solicitors
Crown Law Office, Wellington