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DATABASE UNTIL FINAL DISPOSITION OF RETRIAL. PUBLICATION  
IN LAW REPORT OR LAW DIGEST PERMITTED.**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA634/2015  
[2016] NZCA 341**

BETWEEN    RICARDO ROMANOV  
Appellant

AND   THE QUEEN  
Respondent

Court:    Randerson, Fogarty and Collins JJ  
  
Counsel:   J J Corby for Appellant  
  B J Horlsey and B F Fenton for Respondent  
  
Judgment:                                        19 July 2016 at 10:30 am  
(On the papers)

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**JUDGMENT OF THE COURT**

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- A   The appeal against conviction is allowed.**
  
  - B   The conviction for burglary is set aside.**
  
  - B   A retrial is ordered.**
  
  - C   Any question of bail is to be dealt with in the District Court.**
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**REASONS OF THE COURT**

(Given by Randerson J)

[1] The appellant was convicted after jury trial in the District Court on one count of burglary and sentenced to seven years imprisonment with a minimum period of imprisonment of three and a half years.<sup>1</sup> He has appealed against his conviction and sentence.

[2] One of the Crown witnesses at trial was a co-offender (B) who pleaded guilty to the burglary and was sentenced to a term of community work. B was cross-examined at the appellant's trial. It was put to him that he had received a lighter sentence in return for a promise to testify against the appellant. That suggestion was denied. The prosecutor at the appellant's trial was not aware of any such inducement and told the jury that the sentencing processes were transparent. The Crown accepts that, at least by implication, the prosecutor was submitting that B's denials of some form of inducement to testify were credible.

[3] The circumstances have since been investigated by the Deputy Solicitor-General. It transpired that a joint memorandum detailing the co-offender's assistance and intention to testify at the appellant's trial was given to the Judge who sentenced B. This fact was not disclosed to the appellant or to amicus appointed to assist the Court at the appellant's trial.

[4] In these circumstances, the Deputy Solicitor-General responsibly accepts there could have been at least a reasonable perception that the co-offender's cooperation and willingness to testify against the appellant had actually resulted in a sentence lower than that which would otherwise have been justified. The likelihood this could have occurred, despite the absence of any explicit reference to it in the Judge's sentencing notes, was sufficient to warrant the setting aside of the conviction.<sup>2</sup>

[5] Counsel have agreed this matter may be dealt with on the papers in the light of the Crown's acknowledgement that the appeal must be allowed. The only issue is whether a re-trial should be ordered. That is opposed by Mr Corby on behalf of the appellant. It was submitted on the appellant's behalf that, through the actions of the Crown, it had forfeited the right to seek a new trial.

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<sup>1</sup> *R v Romanov* [2015] NZDC 21508.

<sup>2</sup> *R v Machirus* [2008] NZCA 477 at [16].

[6] We are satisfied the proper course is to order a retrial. Even without B's evidence, it is acknowledged the Crown had a strong circumstantial case against the appellant. The motor cycle stolen in the burglary was worth in excess of \$120,000 and the appellant has a lengthy history of convictions for very serious offending of this type including for aggravated robbery. This serves to explain the otherwise surprising sentence he received.

[7] Importantly, there is nothing to suggest the prosecutor at the appellant's trial acted improperly since he was not involved in B's case and was unaware of the circumstances surrounding B's sentencing. Nor is there anything to suggest the failure to disclose the circumstances of the co-offender's sentencing was anything other than an unfortunate administrative error.

### **Result**

[8] The appeal against conviction is allowed. The conviction for burglary is set aside. A retrial is ordered. Any question of bail is to be dealt with in the District Court.

Solicitors:  
Crown Law Office, Wellington for Respondent