

IN THE DISTRICT COURT  
HELD AT AUCKLAND

T. No. 148/88

BETWEEN THE QUEEN R

A N D ROSS HADDON SPEAKMAN

Date of Sentence: 6 June 1989

Counsel: Mr Rafferty for the Crown  
Mr Lockhart for the Prisoner

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NOTES OF SENTENCE BY JUDGE J W IMRIE

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Mr Speakman, I am going to sentence you to imprisonment for 15 months. I am now going to give you my reasons for that. You may be seated while I do. The Jury found you guilty of 3 counts. They related to shares over which Egnal Holdings held security.

The first offence was committed on 24 March 1987. With intent to defraud you used as security to obtain a loan of \$420,000.00 shares which were already held as security for another loan. A factor of concern is the amount of money involved. There are a number of mitigating factors. It was not a large sum to you and the borrowing of such sums was a common occurrence for you. You were very busy at the time and not a systematic person. The loan was arranged over the phone and formalised by a letter only, so there was a minimum of documentation. If the share certificate had gone direct to the first lender as originally planned, this

offence would not have been committed because you would not have had the certificate in your possession. The lender would have lent the money to you on other security had the share certificate not been available, and the amount of money borrowed plus interest was repaid so there was no loss to the lender.

The second offence was that on or about 22 May 1987 with intent to defraud, you used the same shares to obtain another advance. This time the sum advanced was nearly \$600,000.00. It is appropriate to refer at the same time to count 3 because to a large extent, counts 2 and 3 overlap.

The third offence was that on or about 22 May with intent to defraud by false representation that you have full and unencumbered title to the shares, you caused the lenders to execute the cheque for \$592,000.00. That is the sum that was used to repay the loan that you had obtained in March together with other loans. Once again it is a factor of concern that a large sum was involved. Once again there are mitigating factors. Some that I mentioned in respect of count 1 apply to these charges but further at one stage the shares in question were in fact going to be free for you to use as security and the documentation in respect of the May advance was subject to a number of criticisms.

There are other matters raised by your counsel to which I will refer shortly.

The probation report refers to your circumstances. You are aged 31. It refers to your family situation. You are bankrupt but in employment. You have no previous convictions and these offences were out of character. You have considerable ability in the financial world. You and members of your family, and your parents in particular, have suffered as a result of the collapse of your business and the publicity on these charges. You continue to receive the support of your parents and other members of your family, and the Probation Officer stated that it is unlikely that you will offend again.

Your counsel made written submissions on your behalf. These submissions refer to Sections 6 and 7 of the Criminal Justice Act. They refer to the fact that there was no financial loss in respect of count 1 and, in respect of counts 2 and 3, any loss resulted from the collapse of the sharemarket in October 1987. Your counsel's written submissions refer to your good character and the effect that the destruction of your business career has had on you and your family. Your counsel filed at the same time a folder of references and I have taken them into account.

In Court on 26 May, counsel for the Crown submitted that the Courts take a serious view of this type of crime and with reference to the Criminal Justice Act, he submitted that the only appropriate sentence was one of imprisonment.

In his submissions in Court on 26 May, your counsel

pointed out in connection with count 1, that no financial loss occurred and he submitted that that was an unusual and distinguishing feature of that offence. Your counsel also referred to the reference from the Managing Director of the lender. In respect of counts 2 and 3, he referred to the fact that the charges overlap and that one transaction led to these two counts. He referred to the fact that although a loss may have occurred, it has not been quantified and a loss would have occurred in any event because of the collapse of the sharemarket. He referred to your background. He says that from 1982, you were involved in a considerable number of business transactions involving shares and of those, there were only two in which criminal conduct was established. He points out that on only two days in all that time did you fall from your normally high standard of conduct. He also referred to your personal circumstances and I have already mentioned some of those when dealing with the contents of the probation report. You have the advantages of an excellent education and the support of an excellent family unit and that support will continue. He referred to the stress that you and your family have suffered. He referred to the references which speak of hard work and long hours. He said these offences occurred when you were in disarray, both emotionally and in work. He said that at the time the offences were committed, your financial position was such that you could have obtained advances without using the share certificate concerned and he referred in particular to the evidence of Mr Cox who found you to be completely reliable.

With reference to Sections 6 and 7 of the Criminal Justice Act, he submitted that this was not a situation where you were in a position to trust. He said that there was no prolonged or repetitive offending and that imprisonment would only add to the difficulty of your rehabilitation and would not assist your creditors. Accordingly he submitted that I should impose a sentence of less than imprisonment.

I have to apply the provisions of Sections 6 and 7 of the Criminal Justice Act. I have considered sentences imposed in Courts where large sums of money have been involved but of course each case depends on its own facts. Section 6 provides that in cases such as this, the Court shall not impose a sentence of imprisonment unless it is satisfied that because of the special circumstances of the offence or the offender, any other sentence would be clearly inadequate or inappropriate. The only factor which can take the cases outside Section 6 is the amount of money involved. There are statements in the cases which I have considered to the effect that the amount of money involved would rarely amount to a special circumstance allowing the Court to impose a sentence of imprisonment. However after considering all the mitigating circumstances, I am satisfied in this case that the amount of money involved is a special circumstance which means that any sentence other than imprisonment would be clearly inadequate or inappropriate. I am satisfied that that is the case in respect of each count. In saying that I do not overlook that there was no

loss in respect of count 1 and that the loss in counts 2 and 3 has not been fixed at all.

Before deciding to impose imprisonment I have to consider Section 7(1) which directs the Court to have regard to the desirability of keeping offenders in the community - so far as that is consonant with promoting the safety of the community. No question arises in this case as to the safety of the community, but as I have already said, this type of offending is serious and the large sums involved call for imprisonment. In fixing the terms of imprisonment I have to have regard to Section 7(2) which requires sentences of imprisonment to be short as is consonant with promoting the safety of the community. Allowing for the mitigating factors which I have considered, the appropriate sentence in total is a sentence of imprisonment for 15 months. On counts 2 and 3, you are sentenced to imprisonment for 15 months, on count 1, you are sentenced to imprisonment for 9 months. The sentences of imprisonment run together, so the total is 15 months.

