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GR.29/81

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BETWEEN ANNABELLE MARIE SIMMONS

Appellant

AND POLICE

Respondent

Hearing: 7th April 1981

Counsel: A. J. Shaw for appellant  
D. J. Mackenzie for respondent

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(ORAL) JUDGMENT OF SAVAGE J.

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This is an appeal against sentence by Annabelle Marie Simmons who was convicted in the District Court and on 18th February 1981 was sentenced to six months' imprisonment and ordered to pay compensation in the sum of \$742.37.

The circumstances were that the appellant when applying for a job at the Bidwill Hospital stole the contents of a bag that belonged to the matron which included various items and in particular the matron's cheque book. Mr. Shaw for the appellant said it was a "spur of the moment" theft but he accepted that the subsequent acts which amounted to a whole series of passing false cheques were not done on the spur of the moment. In addition there was a count of receiving stolen property. The learned district judge when imposing the sentence of six months' imprisonment referred to the appellant's very lengthy list of previous convictions and he noted in particular that she was on probation following a previous sentence of three months' imprisonment for three offences involving dishonesty when she committed

these offences.

This Court in terms of the section in the Summary Proceedings Act should only allow an appeal against sentence when it is clearly excessive or is clearly inappropriate unless one or other of the grounds referred to in the Act are satisfied, but they do not apply in this case. In my view, in light of the appellant's previous history and the deliberate way in which these offences were committed it cannot be said that the sentence of six months' imprisonment was clearly excessive or clearly inappropriate.

Mr. Shaw also submitted that the order for the payment of \$742.37 should be set aside. He referred to various aspects of the matter and in particular that a large proportion of the property that had been obtained had been recovered and returned to the complainants. A more important aspect was that in the District Court he submitted that the quantum of the complainants' losses should be determined before any order for the payment of compensation could be made. It seems to me clear that if that was raised before the District Court then it was necessary before any order for the payment of compensation was made that due opportunity should be given to the appellant to adduce evidence on the question of liability for each of the items and the value of each of the items. The section in the Crimes Act which authorizes the making of an order for the payment of compensation refers to loss of or damage to property and it seems to me clear that if property is recovered then some allowance must be made in respect of the value of the property at the time of its recovery. The matter is generally discussed in the case of Police v. Steedman (1975) 2 N.Z.L.R. 485 and following that judgment I reach the conclusion that the order in relation to the payment of compensation cannot

stand. The appeal is accordingly allowed to the extent that the order for the payment of compensation is quashed.

I would like to add, however, that I share the view obviously held by the learned district judge when ordering payment of compensation that it is appropriate in proper cases that compensation should be ordered. It is clear, however, from the authorities that orders should not be made in a blanket way and that care must be exercised in each case to ensure that liability for payment is clear, that quantum is properly established, that the amount ordered is reasonable in the light of the means and capacity of the prisoner: it may be that he has no immediate means but if he is capable of working and earning then he is capable of making a payment of a reasonable amount. That is a view that has been expressed by the English Court of Appeal and I think is also noted in the textbooks. At all events on that basis the appeal is allowed to the extent that the order for the payment of compensation is quashed.

*Barry*

SOLICITORS:

A. J. Shaw of Timaru for appellant  
Crown Solicitor, Timaru