

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.No.244/84

NB: file number
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BETWEEN GWENDA CHRISTINE KAIHE

Appellant

AND THE POLICE

Respondent

Hearing: 22 May, 1984.

Counsel: R.P. Chambers for Appellant.
 Mrs Coral Shaw for Respondent.

Judgment: 22 May, 1984.

(ORAL) JUDGMENT OF VAUTIER, J.

The appellant Gwenda Christine Kaihe pleaded guilty in the District Court at Otahuhu to a very large number of charges of using a document for pecuniary advantage and other charges of a like nature. They involved in the main abuse of the use of credit cards. She was at the same time charged with a breach of probation. In respect of that charge she was sentenced to one month's imprisonment. In respect of the remaining charges she was sentenced to two years imprisonment, those terms to be served concurrently. These sentences were imposed on 24 January 1984.

The appellant appeals to this Court in respect of the sentence of two years imprisonment and in support of her appeal she has, I am informed, urged counsel appearing for her in this Court to draw the Court's attention to the following facts: First, that the District Court Judge imposing the

sentence did not in her view take sufficient account of the fact that she was only one of five persons who were involved in the fraudulent use of the credit cards and that the other four persons have not been brought to account in respect of their involvement. She, it seems, considers that her counsel in the District Court did not place sufficient stress upon this aspect and it is said that this may be regarded as being supported in a measure by the fact that the Judge himself in his remarks on sentencing did not refer to this point. Again, it is said by her and submitted by counsel on her behalf that the fact that she admitted her involvement to the police and assisted in the recovery of some of the goods fraudulently obtained was given insufficient weight. Reference is also made to the factor of her being at the time in a highly unsettled state following her husband's death in tragic circumstances and because of the difficult period she had to go through following this, resulting, as it is said, in her resistance to falling back into this kind of offending being weakened because of her emotional and upset state at the time. It is also put forward today that this Court should take into account now that the parents of the appellant have indicated their preparedness to assist the appellant in the future and that she herself is manifesting a more mature outlook and realises that the time has come for her to put aside her old associations and her continued resorting to offences of this nature. It is said that she now is tired of the pattern of going to prison for offences of this kind and is prepared to frame her life on a different pattern for the future and is also prepared to make restitution in respect of some of the losses imposed resorting for that purpose to moneys which will

be obtained by her from the Accident Compensation Commission by reason of the death of her husband by accident as already referred to. It is therefore submitted on her behalf that she should be given a chance to remain in the community and that she could appropriately be dealt with by the imposing of a term of periodic detention. Counsel accepts this would indeed be an enormous indulgence as it was expressed but nevertheless it is submitted that it may be an appropriate course having regard to all the circumstances to which reference has been made.

The situation here of course is that this appellant took part in this very extensive campaign of fraud waged against retailers and the proprietors of accommodation premises and the like over towns scattered throughout the North Island. The offences follow the same sort of pattern as those in which this appellant has been involved over a number of years in the past and in such circumstances no Court could do other than treat with considerable reserve protestations by the offender after having been convicted of such offences again as to her having form a resolve to make a complete change in direction for the future.

The point with regard to the involvement of others is not one which can weigh with the Court at all as regards the measure of blameworthiness of the appellant herself. The fact that those other persons have for one reason or another managed to escape being charged and punished does not in any way mitigate the criminality involved as regards this particular offender. The fact that she formed herself part of a team engaged in this

type of offence of course in some respects makes her offending worse in that by means of people uniting together in such campaigns as this it often becomes easier for them to effect their fraudulent purposes. It is in my view therefore not surprising that the Judge did not refer to this aspect specifically in his remarks on sentence. It was a point that was clearly stressed by counsel for the appellant in the District Court and clearly therefore not a matter of which the Judge was unaware.

This Court could not of course in any case impose any binding and forcible obligation upon this appellant to hand over by way of restitution moneys receivable by her in the future from the Accident Compensation Commission nor indeed in my view does it seem in the least likely that such restitution could realistically be regarded as something which it could be thought would occur. In any event however that factor must be put aside in my view because offences of the magnitude of those which occurred here, occurring at a time when, as the Judge mentioned, fraud relating to the use of cheques and credit cards has become something of a problem in the community, makes this a situation in which it was obviously necessary that a substantial term of imprisonment should be imposed upon the offender. This must be so bearing in mind the necessity to impose a deterrent penalty as an example to others as well of course as demonstrating forcibly to this appellant herself that indulgence in this kind of conduct cannot be tolerated and will inevitably bring about the imposing of a substantial term of imprisonment when such offending is detected.

The appeal is accordingly dismissed.

A handwritten signature in dark ink, appearing to be 'M. J. Jones', is written in the bottom right corner of the page.

SOLICITORS:

R.P. Chambers, Auckland, for Appellant.

Crown Solicitor, Auckland, for Respondent.