

BETWEEN MARK ANTHONY KESSELLERAPPELLANT

1562

AND THE POLICERESPONDENTHearing: 15 October, 1984Counsel: Mrs L. Smith for Appellant
P.J. Kaye for RespondentJudgment: 15 October, 1984

ORAL JUDGMENT OF VAUTIER, J.

Mark Anthony Kessler was on 9 August, 1984 sentenced in the District Court at Henderson to a term of 18 months imprisonment in respect of an offence of burglary committed on 31 July, 1984. He appeals to this Court against that sentence on the ground that it was an excessive penalty to impose upon him and that he is in need of help and should have been sentenced in such a manner that he could have been sent for treatment to such a centre as the Kahanui Rehabilitation Trust in Opotiki. In respect of this appeal counsel has today urged that the sentence was inappropriate having regard to the suggestion

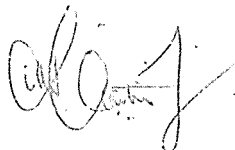
in the probation officer's report that counselling and treatment of the kind mentioned would be in the offender's best interests was not put into effect by the Judge. It is further urged in support of the appeal that this Court should take account of the fact that the submissions made by counsel in the District Court in relation to the question of penalty were couched in such terms as to accept that the appellant could not expect any further leniency from the Court and that a custodial sentence should be imposed upon him. It is suggested that these negative remarks as they were termed provide a further basis upon which this Court could see fit to interfere with the sentence which was imposed.

I have also been referred to a psychological report prepared by Mr Brian Knight in which he also suggests that the appellant would benefit from a period of counselling. The situation presented to the Judge in the District Court was that the appellant had only on 30 July been sentenced to a term of five months non-resident periodic detention in respect of two offences of burglary. The record produced further shows that in the period of 13 months or so up to that time this appellant had been convicted on 10 charges of burglary as well as various other offences of dishonesty. The most disquieting feature of all of course was the offence for which the appellant was sentenced on 9 August was an offence committed only one day after the Court had imposed

a term of periodic detention. The imposing of a sentence of periodic detention in respect of a person who had such a consistent history of committing offences of burglary was obviously a very lenient course indeed to take and it appears to me that the statements which were made by counsel were amply justified in every respect. I refer to the statements of which complaint is made now to support this appeal. It is true, however, that counsel did not feel, it seems, able to urge that his client should be dealt with in the way in which the probation officer thought the Court might consider. However, the reports of course were before the Judge and he, it is obvious from his remarks on sentence, took account of all that was said in the very sympathetic probation reports which were before him. The Judge concluded that notwithstanding these suggestions and the proposals which were made as regards treatment at the institution referred to, it was necessary that he should impose a term of imprisonment. The question is whether I should conclude that he was in error in all the circumstances in so doing. It is noteworthy I think that Mr Knight in his report in which he makes the suggestion of counselling treatment for this young man refers to having known him quite closely for several years past and to having appeared on several occasions and spoken on his behalf in the Courts. It is very obvious therefore that the assistance which Mr Knight has been able to afford and the counselling which he has obviously provided up to now has had no worthwhile effect

at all. It certainly has yielded no tangible results. The question therefore is whether the Judge should have formed the conclusion that there was a sufficiently worthwhile prospect of a response to further counselling to displace the obvious duty resting upon him to which he refers to do something about and have regard to the necessity for protecting the property of citizens. On all that has been placed before me it appears to me to be abundantly clear that he was justified in coming to the conclusion that the prospects were certainly not sufficient to warrant his so concluding. This young man had obviously shown a complete contempt for everything that had been done so far as regards counselling and endeavours to assist him. The blatant disregard for the Court's leniency on the last occasion must certainly I think be regarded as the last straw, as was said. Accordingly I can see no justification whatever for interfering with the sentence. The offence of burglary is so prevalent in this community at the present day that some stringent steps certainly appear to be necessary if the Courts are going to contain the occurrence of these offences in any degree at all.

The appeal is accordingly dismissed.

A handwritten signature in dark ink, appearing to be 'C. J. [unclear]', is written below the text. The signature is cursive and somewhat stylized.