IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. M.223/84

603

BETWEEN KOTARA

Appellant

A N D THE POLICE

Respondent

Hearing: 30 May 1984

Counsel: M.J. Knowles for Appellant
A.M. McIntosh for Respondent

(ORAL) JUDGMENT OF COOK J.

The appellant came before the District Court in December 1982 upon a number of charges - conversion of a motor vehicle, three charges of theft and three of receiving, all the items involved being clothing or items of personal use, and there may be a further charge of unlawfully entering a vehicle. At that time she was sentenced to 100 hours community service. She started to do some work pursuant to that order in March 1983 but completed 27 hours only.

According to the report of the Probation Officer, she failed to report to her placement after that, and while there had been numerous attempts to get her started again, they had been without success. She was charged with a breach of the community service order and, at the same time, a substituted sentence, in respect of the offences which I have mentioned, was applied for.

The District Court Judge gave careful consideration to the matter and, having done so, decided that the only alternative was a custodial sentence and he regarded corrective training as particularly appropriate in the circumstances. Accordingly, the appellant was sentenced to corrective training in respect of the charges.

Probation reports are before the Court - a copy of the report in December 1982 and a recent report, and I have read these and considered them.

Counsel for the appellant has made all the submissions that could be made in her support. He has suggested that, when she came up for sentence in December 1982, there were no convictions for previous offences at that time, but there had, of course, been offences which had been dealt with in the Young Person's Court. He mentioned the value of the goods stolen or received, something of the order of $300, and referred also to the conversion of the car and the unlawful entering. He mentioned that these offences were committed in the company of other persons and submitted that, for a young person who had committed those offences coming before the District Court for the first time, a custodial sentence would be exceptional. He raised the question as to the extent to which anything that has happened subsequently may be taken into account when a substituted sentence is imposed and submitted that subsequent events, in particular, subsequent offending, should only be looked at to gain some indication of the character and attitude of the offender. He submitted that the approach in the District Court should be as in the case of a young person to be sentenced for the first time and that, while subsequent behaviour was not satisfactory, that offending had been dealt with at the time when she appeared in respect of it.

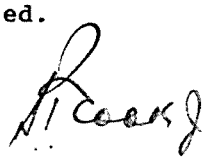
It is very properly pointed out, also, that under the Act the Court is to take into account the community service already served. It is accepted that there was bad motivation

on the part of the appellant and reference was made to the medical situation following an unfortunate accident in September 1982. It is suggested that the appellant has difficulty in coping, but I do note in the latest probation report that the officer sees little evidence of any type of amnesia when the appellant reports on probation.

Under Section 13 of the Criminal Justice Amendment Act 1980, the Court is directed, in a situation such as this, to have regard to the gravity of the offence in question, the amount of community service performed, and any other circumstances that the Judge thinks relevant, and then to substitute any sentence that could have been imposed at the time of the sentence of community service. The sentence must be in respect of the original offences. It certainly should not take into account subsequent offences, in the sense that the person who has offended is punished in respect of those also, or punished again if some penalty has already been imposed. On the other hand, I do not think that a District Court Judge in this situation can close his eyes to the way an offender has behaved when he is assessing his or her character and her attitude to the law and to offending. If there were points to be made in an offender's favour, no doubt he would take those into account also.

Mr Knowles, for the appellant, has commented on, and criticised, certain of the comments of the District Court Judge; in particular, the references to subsequent offending and the fact that the appellant, in the District Court Judge's view, had suffered no real penalty for all her offending over the past 15 months. To the extent that reference to subsequent offending is concerned, I accept that they would not form any ground for imposing a greater sentence than would otherwise be appropriate in the circumstances. The Judge also referred to the community service as being a lenient sentence, possibly it was not. It was certainly not a severe sentence. It was an entirely appropriate sentence at that time.

As I have said, however, he recognised that what he was dealing with was an application for re-sentencing on the original charges and he could see no alternative to a custodial sentence. The task of the District Court Judge was to impose a fresh sentence for offending of a quite serious nature, of a kind which is much too prevalent and for which a deterrent is undoubtedly required. The alternatives open to him were virtually nil, once community service, which the appellant could have served had she been so motivated, was no longer open. To have imposed probation would have been virtually condoning what had happened, especially as the appellant is on probation in any event. Non-residential periodic detention is not available. I am unable to see that the District Court Judge had any alternative to a custodial sentence. In his view, corrective training was appropriate and with that I cannot disagree. The appeal must be dismissed.



Solicitors:
M.J. Knowles, Christchurch, for Appellant
Crown Solicitor's Office, Christchurch, for Respondent.