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IN THE HIGH COURT OF NEW ZEALAND  
TIMARU REGISTRY

GR 28/84

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BETWEEN P FOSTER

Appellant

A N D THE POLICE and MINISTRY  
OF TRANSPORT

Respondent

Hearing: 18 July 1984

Counsel: I.G. Mill for Appellant  
N. Scott for Respondent

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ORAL JUDGMENT OF ROPER J.

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This is an appeal against conviction on a charge of receiving and against sentence on charges of cultivating cannabis and refusing a blood specimen. On all charges he was sentenced to two months' imprisonment, the terms to be concurrent.

I am satisfied that the conviction in relation to the charge of receiving cannot stand.

The facts very briefly were that a young boy, P Green, identified parts of a bicycle found in the Appellant's possession as being from his stolen bicycle. It is clear that the frame of the cycle was not P but it had a number stamped on it and the evidence was that the frame had actually been purchased by the Smith family. At first the Appellant declined to name from whom he had obtained the bicycle, but eventually told the police he had obtained it from one Wayne Smith and paid \$20. He also gave the police the receipt which showed the registration number for the frame, he having obtained that from Mrs Smith. No inquiries were made by the police of the Smiths concerning the explanation given by the Appellant.

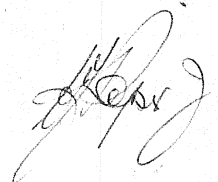
The learned Trial Judge appears to have taken the

view that the Appellant's explanation was a belated one, having been made only on the day of the hearing, but that was not the position. In my view an explanation was advanced here which might reasonably have been true and accordingly the appeal against conviction on the charge of receiving is allowed, the conviction is set aside and the sentence on that charge is quashed.

As for the appeals against sentence on the other two charges, the Appellant is an alcoholic and has been for many years. His previous conviction list, which is of twenty years' duration, is that of an alcoholic. The tragedy is that prior to these present incidents the Appellant was making progress with treatment for his alcoholism. A report from the Alcohol and Drug Centre indicates that he had gone through the longest spell of sobriety in twenty years. Further he had paid off his debts, he being an undischarged bankrupt.

As for the charge of cultivating cannabis, it is true that in May of last year the Appellant was convicted and fined on a charge of cultivating cannabis and the learned Trial Judge not unnaturally took a serious view of this further offending, but it did relate to only one plant. The Appellant deserves credit for the effort that he is making to combat his alcoholism and I think the Court at this point should do what it can to assist him.

The appeal against sentence is therefore allowed and in lieu on each of the charges the Appellant is sentenced to nine months' periodic detention with twelve months' probation, to report on Friday of this week at 6 p.m.



Solicitors:  
Clark & Mill, Timaru, for Appellant  
Crown Solicitor, Timaru, for Respondent