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IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

No. M.84/84

BETWEEN JOHN FREDERICK EDWARD MACKIE

1655

Appellant

A N D POLICE

Respondent

Hearing: 3 October 1984

Counsel: M.J.B. Hobbs for Appellant
G.K. Panckhurst for Respondent

Judgment: 3 OCT 1984

ORAL JUDGMENT OF HOLLAND, J.

The appellant appeared for sentence in the District Court at Christchurch on a charge of burglary and of driving a motor vehicle while disqualified from so doing. The charges were unrelated. On the burglary charge he was sentenced to a term of imprisonment for two years. On the driving while disqualified charge he was sentenced to a term of imprisonment of 18 months to be served concurrently, and he was disqualified from driving for a period of three years. The appellant appeals against all aspects of the sentences.

The circumstances of the burglary were startling, and I have used the word startling because the District Court Judge described the burglary as appalling and counsel has been able to make some criticism of the choice of that word. The appellant, who had only relatively recently been released from prison, was drinking

in a hotel when apparently he ascertained that another customer of the hotel wished to purchase a television set. He thereupon set out and with the use of a key which could get into a house, broke into that house, stole a television set, brought it back to the hotel, sold it for $150, although it was valued at $1350, and that was apparently that. I am not surprised that the District Court Judge described the burglary as appalling, although it was perhaps an unfortunate term because the appellant apparently considers that it meant he regarded it as a very serious burglary. It obviously was not at the serious level of burglaries. The circumstances in which it was committed were, however, in my view correctly described as appalling and I rather suspect that the views of the District Court Judge were directed more to the receiver than to the burglar that was before him. However, be that as it may, the question is was two years imprisonment an appropriate sentence for this burglary by this offender?

Counsel for the appellant has said everything that can be said on his behalf. He has reminded me that notwithstanding the past behaviour the sentence that should be imposed should be essentially related to the nature of the actual offence. Burglary is always a serious crime. Sentences imposed for burglary vary substantially, and I accept that two years is a substantial term for burglary. But I do not accept the submission of counsel for the appellant that two years was an inappropriate sentence for this particular offence. The Court will first look at an offence and then ascertain whether there are circumstances relating to the offender or the way in which the offence was committed which enable the Court to reduce the sentence that the offence otherwise merits.

Sad to say, there is not much that can be said in favour of this appellant, both in relation to the way in which he committed the offence and the way in which he has behaved in the past, and the lack of confidence the Court must have in his ability to live in society without continually offending. It may be that another Judge would have imposed a sentence of 18 months, but I cannot see any sentence less than that as having been anything other than appropriate. However, having said that, the Court must consider the charge of driving while disqualified. This was his fourth offence. I accept that the 18 months' imprisonment to be served concurrently was a very heavy sentence. For myself I should probably have imposed a consecutive sentence and it may well have been that a more accurate assessment of this man's culpability and the appropriate penalty might have been one of 18 months on the burglary and six months on driving while disqualified to be served consecutively. So that in effect he would serve a sentence of two years. The imposition of sentence is not an exact science and the overall result is what matters. The overall result is that for these two offences this particular appellant is to serve two years' imprisonment. I am satisfied that that sentence was properly imposed and was appropriate.

I turn now to the disqualification from driving. The Transport Act requires a person on his second charge of driving while disqualified to be disqualified from driving for a period of at least 12 months. In a case such as this where the appropriate penalty for disqualified driving is imprisonment there does not seem to me usually to be good grounds for going beyond the minimum disqualification required by the Act. This is not a case of bad

driving, a case of an accident or damage to anyone, or of driving while affected by liquor. Issues of public safety do not appear to arise. The man is to be punished for failing to observe the law. In many cases the further disqualification from driving will be an effective punishment to be imposed with a fine or some penalty short of imprisonment. Where, however, the Court decides that imprisonment is the appropriate penalty and where as here there seems to be no case for the protection of the public I cannot see any justification for the Court imposing a disqualification beyond the minimum period prescribed by the Statute.

It accordingly follows that the appeal is to be allowed in part. The sentences of two years and 18 months imprisonment are to remain. The period of disqualification from driving is however reduced from three years to one year.

R D Holland J