

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. M.411/84

1162

BETWEEN DAVID WAYNE MARSHALL

Appellant

A N D THE POLICE

Respondent

Hearing: 14 September 1984

Counsel: Miss C.M. Risk for Appellant
 B.M. Stanaway for Respondent

(ORAL) JUDGMENT OF COOK J.

The appellant pleaded guilty in the District Court to a number of charges, four charges of false pretences and four charges of obtaining credit by fraud which were committed in October 1983 and then, in May of this year, there is the theft of a Post Office card and, following that, 11 charges of using the card to obtain pecuniary advantage. The first episodes of last year yielded him some \$268.00 and the latter offences, 11 in number, were for \$200 on each occasion.

The District Court Judge noted that the appellant was a person of some ability but had been before the Court on a number of occasions. He regarded imprisonment as inevitable and imposed sentences to run concurrently; on the charges of false pretence and using the card, twelve months, credit by fraud, three, and theft, one.

I have read the Probation report and note the appellant's background and the suggestion that he has a propensity for dishonesty. It is noted there that the

appellant has never responded to probationary supervision and that release on probation was not recommended.

He has a substantial list of charges of dishonesty; first, in 1976 when he was placed on probation for theft; then there was a further offence of theft with intent to defraud in 1978; again in 1980 he appeared for obtaining credit by fraud and other offences and on that occasion was sentenced to six months imprisonment. A further theft in 1981, a minor theft for which he was fined and in 1983 for theft again and using documents to procure an advantage. He was fined and in the same year he was sentenced to non-residential periodic detention.

Counsel on his behalf has stressed certain matters - that the bank card which he took belonged to a woman with whom he was then living. It appears that he wished to build up a fund to permit him to go to Auckland to see someone else with whom he had been friendly and used the complainant's card for this purpose. When things did not go well in Auckland he regretted what he had done and returned to Christchurch. Whether he gave himself up to the police, or whether the complainant informed the police and they were waiting for him, is not clear, but I do not think it has a bearing on the outcome of the appeal.

It is stressed that the appellant is most anxious to put his offending behind him, but he will, of course, have the opportunity of doing that when his sentence has been served. There is a suggestion that he has offered to make compensation, but it is not apparent from what source any compensation could come. He stressed further that the relationship with the complainant has continued and it is clear it will do so and that, were he to be released in the near future, there might be employment available for him. Be those matters as they may, the fact remains is that these were quite serious charges. He has a very bad record. There is nothing in it which would suggest that the District Court Judge should have been

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particularly lenient and, in the circumstances, I cannot regard 12 months imprisonment on the more serious charges as manifestly excessive. The appeal is dismissed.

A handwritten signature in black ink, appearing to be 'A. G. G. G.', written in a cursive style.

Solicitors:

C/o Saunders & Co., Christchurch, for Appellant
Crown Solicitor's Office, Christchurch, for Respondent.