

IN THE HIGH COURT OF NEW ZEALAND  
NELSON REGISTRY

NO. M.48/84

1643

BETWEEN      DAVID ROSS NEAL

Appellant

A N D      THE POLICE

Respondent

Hearing:      23 November 1984 (In Christchurch)

Counsel:      N.A. Till for Appellant  
                  Miss K. MacDonald for Respondent

---

(ORAL) JUDGMENT OF COOK J.

---

The appellant came before the District Court for sentence on the 2nd October last on 12 charges - 10 of theft and two of burglary. The thefts were of an assortment of items, stereo speakers, steering wheels, car equipment, tools and so on. One of the burglaries was committed with three associates when a club was broken into and the second occurred when the appellant broke into another club and stole petrol. To a degree, the stolen property has been recovered, but it seems that items to the value of some \$200 have not been.

I have read the probation report and see that the appellant is now 22. I note the problems which he has encountered in his life and the affect that they may have had upon him. I note, also, that while at periodic detention, his attendance was not good and it is suggested that he lacks self-discipline and the habit of working. The previous offences include theft, using a document for pecuniary advantage. Then in 1982 there are two charges of burlary and conversion to which he was sentenced to six months periodic detention, a further theft, receiving and then in March of this

year he was sentenced to nine months periodic detention for theft.

The District Court Judge, in considering sentence, stressed the number of times the appellant had come before the Court and the penalties that had been imposed in the past. Also, and in particular, the fact that he had been given an opportunity to reform in March when he received the sentence of periodic detention and not one of imprisonment. He decided that imprisonment was the only appropriate sentence and that it should be for a term of 12 months on each charge.

Counsel for the appellant has said all that could be said for him. He accepts that the record is poor and that so far the appellant has not shown any particular inclination to cease offending. It was suggested that he was not the prime mover in the series of offences which were committed, but I have no knowledge of what the true position is there. The personal circumstances have been stressed, the fact that he was an adopted child and does not get on well with his adopted parents, a slow learner and does have handicaps. In particular, there is the alcohol problem and I have been shown a letter from the Nelson Hospital Board with an assessment and recommendation. A difficulty had been, however, that, while the appellant seems to recognise the affect alcohol has had upon him, his motivation has been limited. The probation officer also is not confident that the motivation is genuine. No doubt, at the present time, he does desire to overcome his alcoholic problem, but that is something which he must resolve when his term of imprisonment is at an end.

It has been submitted for the Crown that imprisonment is not inappropriate, which is clearly correct, and in this case, having regard to the number of offences, the past record, the planning that must have been involved, a period of 12 months is not excessive, I consider that to be correct also.

3.

The appeal must be dismissed.

*R. Young*

Solicitors:

R.A. Young, Hunter & Co., Christchurch, for Appellant  
Crown Solicitor's Office, Christchurch, for Respondent.