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IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

M.158/84

BETWEEN DALE WILLIAM O'SHEA

Appellant

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A N D THE POLICE

Respondent

Hearing: 23 May 1984

Counsel: Ms E.H.B. Thompson for Appellant  
A.M. McIntosh for Respondent

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ORAL JUDGMENT OF ROPER J.

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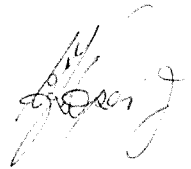
This is an appeal against a sentence of two years' imprisonment on a charge of burglary. The Appellant and a co-offender entered an alleyway off Armagh Street and proceeded to cut a hole in the wall of a jeweller's shop. That was as far as they got because the police arrived. The Appellant is 24 and since 1975 has, by my count, 19 convictions for burglary apart from other offending.

Ms Thompson bases the appeal on two grounds: first, on the question of disparity. The Appellant's co-offender, one Clark, was sentenced to six months' periodic detention for this offence. I have seen Clark's list of previous convictions and if anything it is worse and certainly no better than this Appellant's. Ms Thompson's second submission is that a sentence of two years is manifestly excessive in that there is the really serious danger that O'Shea, the Appellant, is developing into a recidivist. The Appellant was already serving six months' imprisonment imposed one week before on charges of receiving and possession of cannabis. It is unfortunate that there are no sentencing notes available from the learned District Court Judge. Ms Thompson agrees

realistically that a term of imprisonment is inevitable but submits in the circumstances an additional eighteen months was manifestly excessive and the sentence imposed should have run concurrently with the six months the Appellant is already serving.

It is the disparity point, which is not necessarily a basis for interfering with the sentence, which weighs with me, and I agree with counsel that the Appellant is fully justified in holding a real sense of grievance, particularly as the burglary was most inept and nothing was stolen. It is also important that some hope be held out for the Appellant's future.

In all the circumstances I am satisfied that the sentence was manifestly excessive. The appeal is allowed with effect that the Appellant is sentenced to eleven months' imprisonment to be followed by twelve months' probation.



Solicitors:

Harper Pascoe & Co., Christchurch, for Appellant  
Crown Solicitor, Christchurch, for Respondent