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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.366/84

BETWEEN CLARK ANDREW POPE

APPELLANT

1268

A N D POLICE

RESPONDENT

Hearing : 11 October 1984

Counsel : C.J. Tennet for Appellant
Q. Almao for Respondent

Judgment: 11 October 1984

ORAL JUDGMENT OF HILLYER, J.

This is an appeal against a sentence of six months imprisonment imposed on each of four charges by District Court Judge Ryan in the District Court at Hamilton on 22 August this year. The Appellant appeared for sentence on two charges of false pretences, one of theft of a motor car and one of forgery.

The offences arose out of what the learned District Court Judge accurately described as a sophisticated and cunning scheme whereby the Appellant stole a car, made a false declaration to the Post Office and thereby obtained registration papers for the car together with a fresh set of number plates, sold the car to a car dealer and deposited the proceeds in a Waikato Savings Bank account under a false name. At the time he committed these offences, he was serving a sentence of periodic detention for a somewhat similar type of charge. The learned District Court Judge noted that the probation officer's report did not recommend probation or periodic detention or community service and concluded that a term of imprisonment was required.

On his behalf, Mr Tennet has put forward everything that could be said and it is indeed unusual for a young man of 22 to be sentenced to imprisonment when he has only one previous conviction - for which he received the penalty of non-residential periodic detention to which I have referred. It appears, however, that his response to that sentence of periodic detention was extremely poor.

When the matter first came before me, I had a letter from the Appellant in which he made a number of allegations suggesting first that counsel who represented him before the District Court Judge did so in a very inept fashion, that the probation officer had told lies, and that comments in the probation report regarding the Appellant's response to periodic detention were completely inaccurate.

As a result, I adjourned the hearing of the appeal so that a report could be obtained from the warden of the periodic detention centre. That report is now before me and it is clear that the pattern of deceit which the Appellant indulged in in the offences for which he was charged has been repeated in his attempts to deceive the Court on this appeal.

The Appellant says in the letter that I have referred to that his reports at the periodic detention centre were very good and satisfying. He said he enjoyed working there helping the disabled so much that he often returned in his own free time to help out and was even using his own vehicle to take patients to visit their relatives up to 100 kms travelling distance. It appears that on one occasion he did take a resident on an outing voluntarily but apart from that, the letter appears to be a complete fabrication.

The warden of the periodic detention centre makes it quite clear that his response to periodic detention was very poor, he did barely enough work to avoid penalties being imposed, he was at times hard to find, and the work that he did perform often required doing again because it was unsatisfactory.

He must realise that he will not get away with deceit and false pretences - whether for the purpose of committing offences or for the purpose of endeavouring to persuade the Court that leniency should be granted to him.

The learned District Court Judge came to the conclusion on the facts before him that a term of imprisonment was necessary to teach this young man that such a course of conduct would not pay. I agree with the District Court Judge.

In the hope that the lesson that is intended by the sentence and, indeed by the dismissal of the appeal, will be understood, I ask his counsel, Mr Tennet, to pass on to him the comments that I have made. The appeal is dismissed.


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P.G. Hillyer, J.

Solicitors:

McCaw Lewis & Chapman for Appellant
Crown Law Office for Respondent