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N2LR

IN THE HIGH COURT OF NEW ZEALAND  
NEW PLYMOUTH REGISTRY

M.103/84

1504

BETWEEN DEAN ANTHONY PRICE  
Appellant

A N D POLICE  
Respondent

Counsel: No Appearance for Appellant  
C.Q.M. Almao for Respondent

Hearing and  
Judgment: 5 December 1984

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ORAL JUDGMENT OF GALLEN J.

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On 19 October 1984 the appellant was sentenced in the District Court at New Plymouth on 4 charges of burglary, a charge of theft, unlawfully taking a motor vehicle, disqualified driving and a further charge of theft. On all charges except that of disqualified driving, he was sentenced to imprisonment for a term of 8 months and there was a direction that that was to be served in a youth prison. He was also required to pay restitution of \$428.48. On the charge of disqualified driving and on the charge of unlawfully taking a motor vehicle, he was also disqualified from holding or

obtaining a motor driver's licence for a period of 12 months and was sentenced to imprisonment for 2 months on the disqualified driving charge - that to be concurrent with the other sentence.

In view of the circumstances surrounding the offence and the material contained in the reports from the Probation service, I do not think it could be said that the penalty was in any way excessive or imposed on a wrong principle.

The appellant in his notice of appeal indicates a concern that his co-offender was sentenced to similar penalties. Whether this is so or not the penalties must be considered in relation to the appellant himself. I do not have available, nor am I entitled to take into account, the special circumstances which may have applied to the co-offender, but in any event it is clear enough that the learned District Court Judge did consider the personal circumstances of each.

The appellant also indicates that when he leaves prison, he will have no job or home and will be in no position to make payment of the restitution. He indicates his intention to move to another district and says that the payment of restitution will effectively impede his rehabilitation.

The value of the items taken was considerable. I do not think it is unreasonable that people who interfere with the possessions of others should be obliged to accept some responsibility for their actions. In this case, I do not think that the learned District Court Judge's conclusion in imposing a requirement of restitution could be regarded as excessive. In view however of the special circumstances of the appellant, it does seem appropriate that he should have some time to make the payment of restitution and should do so with such support as may be available to him through the Probation service. He was not sentenced to probation in the original sentence.

I propose therefore to allow the appeal, but impose the same sentence as was imposed in the District Court, but to vary it by including an additional period of 6 months' probation; one of the conditions of which is that the appellant is required to make payments of restitution as directed by the Probation Officer. The time of probation is to commence on the release of the appellant from his prison sentence.

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Solicitor for Respondent: Crown Solicitor, Hamilton

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