

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M. No. 546/84

1648

BETWEEN MALCOLM MERVYN PAGE

Appellant

A N D POLICE

Respondent

Hearing: 2 November 1984

Counsel: K.J. Grave for Appellant
N.W. Williamson for Respondent

Judgment: 2 November 1984

ORAL JUDGMENT OF QUILLIAM J

This is an appeal against a sentence of nine months imprisonment on charges of burglary and possession of burglary instruments.

The appellant used a screwdriver to break a window in the door of a house. He had first put adhesive tape over the window. He reached inside but was unable to open the door. He was then disturbed and ran off and when apprehended was found to have in his possession the screwdriver, a torch, some gloves and a roll of tape.

The appellant is 31 years of age and has a long list of previous offending. He has a history of drug abuse, that is, alcohol, heroin and other drugs, and has shown an inability to stop using these drugs for more than brief periods. The present offences were committed only about two days after release from his previous term of imprisonment

which was for two years for some 78 offences, mostly of false pretences.

The appellant has submitted a written plea on his own behalf to the Court. This has been largely repeated and clarified by counsel appearing for him. It is said that the District Court Judge may have taken a wrong view of the case because he observed that this looked like a burglar going about his business. It was said that, notwithstanding a very long list of previous offending, it happened that this was the first offence of burglary and so perhaps the District Judge viewed this appellant in a wrong light. It is evidently the case that this was his first conviction for burglary but, of course, the length of his list of offending for dishonesty makes that fact somewhat unhelpful. It was said that this was an inexpert and bungling offence, and no doubt it was.

It was argued principally, however, that the appellant, having just been released from prison, was particularly vulnerable to re-offending especially as he had at once reverted to his use of drugs and that therefore a sentence of periodic detention would have been more appropriate.

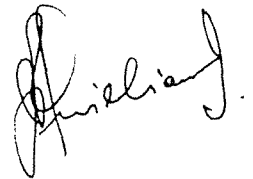
A further matter raised was that the sentence was imposed without obtaining an up-to-date probation report. It is indeed the case that that was so. There was insufficient time to complete a report and so the District Judge proceeded on the basis of the most recent report which was then about 18 months old. However, as the appellant had spent virtually the whole of the intervening period in prison there is unlikely to have been a great deal to add. One thing which a new report no doubt would have shown was that the appellant had been offered the opportunity of a course at Odyssey House in Auckland for his drug addiction.

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but had declined. He did so because he thought that was, in effect, a further sentence of two years imprisonment on top of the sentence he was then serving.

Although the appellant's troubles may have arisen largely out of his inability to keep away from drugs, the unfortunate fact is that he continues to offend and so the protection of the public had become an increasingly significant matter. I am not prepared to interfere with the sentence and the appeal must be dismissed.

Solicitors: K.J. Grave, CHRISTCHURCH, for Appellant
Crown Solicitor, CHRISTCHURCH, for Respondent

A handwritten signature in cursive script, appearing to read "K. J. Grave".