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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. M.469/84

1161

BETWEEN RICHARD JOSEPH PANAPA

Appellant

A N D THE POLICE

Respondent

Hearing: 14 September 1984

Counsel: P.N. Dyhrberg for Appellant
B.M. Stanaway for Respondent

(ORAL) JUDGMENT OF COOK J.

The appellant pleaded guilty to two quite unrelated charges, first in May of this year, the unlawful taking of a motor vehicle of a value of some $1,600, and then, in July, a charge of behaving in a disorderly manner that, in the circumstances, was likely to cause violence against persons or property to start. This was in the foyer of the Christchurch Women's Prison.

So far as the conversion is concerned, this case was more than one where a vehicle is taken, driven for a distance and then abandoned. The vehicle in question was locked when taken and again when found. Most significant is that different registration plates appeared on the vehicle and a warrant of fitness label had been removed. Certain items were missing, there was a small amount of damage assessed at $365.

On the other charge, it appears that the appellant wished to visit someone in the women's prison, went there, gave a false name but, when identified and refused admission, would

not leave, shouted abuse at the female officer and then threw a handful of stones at that officer some of which hit her. She had to run inside and call the police.

The appellant has a list of offences covering some 10 years. For the most part they are crimes of dishonesty. I note that in 1978 he was sentenced to detention centre, in 1979 to borstal training, in 1981 to six months imprisonment, in 1982 to a year's imprisonment, in 1983 a substantial term of non-residential periodic detention and earlier this year he had to come before the Court for a breach of the detention order.

After noting the facts, the District Court Judge accepted that the appellant felt remorse about his behaviour at the women's prison. He regarded the unlawful taking of the vehicle as another step in the long series of offences of dishonesty and imposed a sentence of four months in respect of the unlawful taking charge and one month in respect of the other charge, the two terms to be cumulative.

Counsel for the appellant has, I am sure, said all that could be said on the latter's behalf. So far as the disorderly behaviour charge is concerned, he has indicated the distinction between the present legislation and the section that appeared in the Police Offences Act. While he accepts that the sitatuion was such that a plea of guilty was a proper one, he does urge that the degree of the offending is important and that in this case it was by no means serious. He has drawn my attention to the letter which the appellant wrote as to his reasons, but that was before the District Court and the District Court Judge does acknowledge the remorse that the appellant felt. The unlawful taking - it is suggested that the appellant has made significant steps to overcome the problems that have beset him in the past and counsel has referred, in particular, to the references in the probation report, to the fact that while his abuse of drugs continued until early this year, he has made a big effort and has succeeded so far, to the extent that he has cut out his use

of hard drugs. It is suggested, also, that the appearances in 1983 perhaps reflect his then involvement with drugs and that there has been a considerable drop in his offending since. His breach of a periodic detention order, for which he appeared in March 1984, occurred in November 1983 and since then he has completed his sentence.

It is submitted that these facts should have received some recognition and that despite the references in the final paragraph of the report, periodic detention might be appropriate. Unfortunately, the report states that the warden of the centre says that the appellant struggled through his last sentence and that no purpose would be served by the imposition of a further term. Well, it may be that he has improved, but it seems to me it would have been very difficult for the District Court Judge to have ignored the warning that is so clearly contained in that report. It is stressed further that the offence should be treated as a more isolated offence but I do not think I could be satisfied that the change is such that one can eliminate from one's consideration the long line of previous offending.

As charges of unlawful taking go, it must be considered a serious one even though the damage caused may not be so very great. It has been submitted for the Crown that, in fixing the sentences in which he did, the District Court Judge had taken into account matters such as those raised by counsel and I think that submission is made with justification. As I have said, the unlawful taking charge is quite serious. I do not consider there is anything in the past conduct to show that leniency should be extended. In view of what is said in the probation report, it cannot be said that imprisonment is not appropriate and I do not consider that four months is excessive.

The disorderly charge is not a serious charge of its type but any conduct such as that, in the particular situation where it occurred, must be discouraged. Imprisonment is not

inappropriate. The only concern in my mind has been whether the term should be cumulative upon the four months imposed for the unlawful taking, but the two offences are quite separate, they are quite different in their nature and I think it was proper for the District Court Judge to make the order which he did.

The appeal must be dismissed.

Solicitors:
P.N. Dyhrberg, Christchurch, for Appellant
Crown Solicitor's Office, Christchurch, for Respondent.