

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.447/84

BETWEEN P. PERREAU

1155

AppellantAND POLICERespondent

Hearing: 3 September 1984

Counsel: J.F. Hooper for Appellant
D.J.L. Saunders for Respondent

ORAL JUDGMENT OF HARDIE BOYS J.

This is an appeal against a sentence of four months' imprisonment imposed on a charge of burglary which involved the breaking and entering of a bottle store in Kaikoura, which the appellant was passing through, and the theft of spirits valued at close to \$700. The theft was discovered because later on in his journey the appellant's vehicle left the road and the remains of the stolen liquor were found in the car.

The District Court Judge pointed out that the appellant had had a number of convictions for offences involving dishonesty and that the circumstances of this particular burglary coupled with his past record meant that prison was the proper penalty. Mr Hooper has drawn attention to a number of matters not specifically referred to by the Judge in passing sentence but which are set out in the probation report which

was before the Judge and which he clearly must have taken into consideration even though he said nothing about them. This man had had a bad history of offending culminating in a sentence of three and a half years' imprisonment for aggravated robbery in 1976. Since then he has endeavoured to settle down and made an effort to improve himself. He seems to have done quite creditably in that regard although he has been hampered by his inability to obtain work. He has been before the Courts twice since 1976, both on relatively minor matters and certainly he has not been involved in any offence of dishonesty for the last 8 years. The probation officer felt he deserved a further opportunity to continue this improvement rather than suffer the set back of a further custodial sentence. He thought that periodic detention was undesirable because that might put him in contact with associations that he wishes to leave behind and he found that he was suitable for community service. A placement was arranged, although whether that is still available is open to question.

There is considerable force in Mr Saunders' submission that this was a serious offence which warranted a term of imprisonment no matter what the present circumstances of the appellant might be. The Court's function is primarily to punish crime and not to provide social services for people who cannot resist the temptations of offending. On the other hand the Court is required to look at alternatives to imprisonment and although that applies particularly with people who have a small record of offending, I think that one can apply that principle to this man, who has really endeavoured to overcome his past tendencies.

I have come to the conclusion that the Judge did not take into account those more positive factors, and the need in the community's interest to encourage rather than run the risk of reversing the improvement the appellant has shown over the last few years. I do not think that community service is the way to deal with this case. I think that the appellant has to learn to cope with mixing with all kinds of people and have the strength of character to keep his past behind him no matter who he associates with. I think the sentence of periodic detention is the appropriate one in this case. The appellant will have to realise that he is very lucky and that if this sort of thing happens again prison is going to be inevitable. The Court cannot allow him to pass the responsibility for himself on to other people all the time. He has to face up to life and live it and be responsible for it himself.

For the reasons I have given the appeal will be allowed, the sentence of imprisonment quashed and in its place the appellant will be sentenced to eight months' periodic detention, which is a long time but it is a way of showing him the lesson which I have been endeavouring to spell out in what I have just been saying. That sentence will begin on Friday of this week. He is to report to the warden at the periodic centre on Friday and thereafter to report on such occasions as the warden directs. The full details of the sentence will be set out in a form which he will be handed before he leaves the Court.

A handwritten signature in black ink, appearing to be "L. H. J.", is located at the bottom right of the page.