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IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

No. M.106/84

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1261

BETWEEN GRAHAM KEITH RENWICK

Appellant

A N D POLICE

Respondent

Hearing: 20 September 1984

Counsel: Judith M. Hampson for Appellant
W.J. Wright for Respondent

Judgment: 20 September 1984

ORAL JUDGMENT OF HOLLAND, J.

The appellant, Graham Keith Renwick, appeals against a sentence of four months' imprisonment imposed upon him in the District Court on a charge of burglary. Counsel for the appellant very properly conceded at the outset that in relation to the offence it could not be argued that the sentence of four months' imprisonment was either excessive or inappropriate. She nevertheless submitted that there were circumstances which made this sentence inappropriate. It was a bold submission.

The appellant commenced offending 11 years ago. He was convicted of theft in 1973, burglary in 1977, theft in 1979, theft in 1980, burglary in 1983, then further charges of burglary and theft in that year, and three months ago a charge of wilful damage. He has had probation, he has been under supervision of the Child Welfare Department, he has had non-residential periodic detention, He has had community service. He continues to offend.

He was a party to a planned burglary of business premises. Far from the sentence of four months being excessive in the light of a man with that record and partaking of a

planned burglary, it was lenient and could easily have been much greater. Notwithstanding all that and the seriousness of all that I have said, there are occasions sometimes when a Judge has to take a chance in relation to his obligations to the community as against his obligations in relation to an accused person, and I am going to take a chance in the case of this appellant.

It is clear that there is some degree of psychological disorder in this man's past. He has had the benefit of psychological counselling on three occasions starting in his youth. All that does not justify him continuing to commit burglary. His marriage has broken down, there are four children of the marriage. After a contested hearing in the Family Court he was granted custody of the two younger children of his marriage. That was because sadly the two older children are partially disabled and it was the view of the Family Court Judge that notwithstanding the earnest attention of the mother, the four children were simply more than she could cope with. A sentence of imprisonment of course will have some effect on his children, and more than is usually the case. But as I said in the course of argument that can be said of a number of people who commit crimes, and it is generally their wives and children who have to suffer when they go to gaol, and I am not greatly influenced on that count alone. There is, however, obviously some good in this man in that a Family Court Judge has regarded him as suitable to have the custody of these children.

What, however, does trouble me is this. He was with a co-offender and he says that his co-offender was the instigator. There may be something in that, but not much,

because this man's record has shown that he has been led on a number of occasions to committing crime and he has to stop. However, that co-offender was serving a period of ten months' imprisonment. He also was before the Court not only on this burglary charge but on another. The District Court Judge imposed a sentence of eight months' imprisonment but failed to say that it was to follow on the sentence of imprisonment that the co-offender was already serving. In that respect I am satisfied the co-offender got a bonus and probably a bonus because of a mistake, but the fact of it was that he was required to serve only one month more than the sentence he was already serving because of course the sentences were by law deemed to be concurrent. I have said before that although comity of sentence with co-offenders is an important principle if someone has got an inadequate sentence it is not always a good ground for repeating that error and providing an inadequate sentence for the other co-offender. I am, however, troubled that this man with his background, if he is required to serve this sentence which will be substantially more than his co-offender, will carry on for the rest of his life with a misplaced and misguided view that justice is not available to him and the result on the public may be worse, and it is primarily for that reason, but also because he has been shown to be a good father and his children need him, that I am prepared to take a risk.

I address my remarks to the appellant who is here in person. I am chancing my arm on your behalf. If you continue to commit burglaries the people of Dunedin and the people of New Zealand have every right to say that I acted irresponsibly in not seeing you were punished for what you did.

I hope that you have done what your counsel submitted and that is reached some degree of maturity where you can change your ways. I also hope you won't let yourself down, or me.

I propose to allow the appeal and to quash the sentence. I do not consider periodic detention appropriate in view of your obligations to your children, nor do I consider this a proper case for community service. In lieu of the sentence I propose under section 41 of the Criminal Justice Act to order that you come up for sentence if called upon within a period of two years. But as a condition of that I also direct you to make compensation in the sum of \$324.23 as was ordered by the District Court Judge. The effect of that order, Renwick, is this. If at the end of two years you have not offended this matter is gone as far as sentence is concerned and you can forget about it. If, however, during those two years you do offend it is the duty of the police not only to prosecute you for whatever you offend in the course of two years, but to see that you are brought back to this Court so that the appropriate sentence for burglary is imposed upon you. It is entirely up to you. You may stand down.

The appeal is accordingly allowed. The sentence is quashed and in lieu thereof is the sentence I have just imposed.

A. D. Holland