

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. M.686/84

1633

BETWEEN

RUSH

Appellant

A N D

POLICE

Respondent

A N D

No. M.685/84

BETWEEN

MARSHALL

Appellant

A N D

POLICE

Hearing: 3 December 1984

Counsel: W. Rosenberg for Appellants
 A. McIntosh for Respondent

Judgment: 3 December 1984

ORAL JUDGMENT OF HOLLAND, J.

I have spent a great deal of time in hearing this appeal and having considered it earlier. The time has been taken in indulging in some degree of argument with counsel. The argument arises because no Judge enjoys having before him two 17 year olds who have reached the stage where one gets past describing them as young layabouts and now being young criminals. Seventeen is very young and most of us can still remember that the borderline between

those who obey and those who don't, or often it is those who get caught, is pretty fine. I am addressing my remarks primarily to the two prisoners. I have a view that is not shared entirely by the whole judicial system and that is that anyone on practically any offence is entitled to a lot of sympathy the first time he is before the Court because I believe we are all tempted at some time. But I also believe that immediately after having been given that indulgence if people offend they ought to be hit hard to let them know that society simply cannot tolerate it. Now I do not know, Rush, and I do not know, Marshall, whether I am wasting my time talking to you. I know what is likely to happen, the statistics all show it, that you will go on and on and on committing more and more offences and spending more of your life in gaol than you spend out of it and it is a pretty hopeless sort of future. You have not had the easiest starts in life probably either of you, and I know it is easy for me to say in my comfortable position that you should be able to tolerate not getting a job without offending. I am quite aware of how hard it is for you to get jobs but I am not sure that they are not around if you really work hard enough at it.

You have to be punished. You have shown from your record that you have no concern about observing the law. You don't get punished for what you have done in the past, but your past behaviour shows that it is too late to make the submissions on your behalf that were made. It is unfortunate in your case that the probation officer concluded his remarks recommending corrective training with the addition that there were no facilities for periodic detention in Ashburton. I do not consider periodic detention right for you at all. Your behaviour has been too bad for

that. Periodic detention is only an alternative to a sentence of imprisonment. A tougher alternative is the sentence of corrective training which is the equivalent of imprisonment but is designed for youthful offenders like you. You have no jobs, you have no dependants. There is no great hardship in your losing your liberty for three months. I am quite satisfied the sentence of corrective training was the appropriate sentence to be imposed. It may seem a long while to you today. It is not a long while and it will not be pleasant. You will also be with a whole lot of people who will probably spend the three months planning when they get out how they are going to commit more crimes and more offences. I am aware of all that, and I am aware the sentence won't reform you. The only thing that is capable of reforming you is yourselves. I hope you are man enough, because now you are almost old enough to be men, to be able to take your three months and look forward to getting out and getting started on a proper life.

Because I believe you have got to have some light at the end of the tunnel and because you are being sentenced to prison, or the equivalent of prison, I think I should interfere with your disqualification from driving. It is important that you be able to get a job, and I am aware that the lack of a driving licence can seriously prejudice you in that.

I propose therefore to allow the appeals in respect of that part of the sentence which involves disqualification from driving and that is quashed. The sentence of corrective training is one you must serve. Stand down.

A D Holland