

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

NO. M.423/84

1159

BETWEEN      M      THOMAS

Appellant

A N D      THE POLICE

Respondent

Hearing:      14 September 1984

Counsel:      S.C. Barker for Appellant  
                   B.M. Stanaway for Respondent

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(ORAL) JUDGMENT OF COOK J.

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The appellant pleaded guilty to over 150 charges of fraud each relating to the use of a bank card, two stolen cards having come into his possession. I need not go into the details. It appears that a substantial sum of money was obtained in this way and was not repaid. The District Court Judge noted the past offending of the appellant and also noted that he had not offended for some time. He regarded, and understandably so, the offences as serious and he sentenced the appellant to 9 months imprisonment, to be followed by probation for 12 months.

Although he had noted that there was no possibility, at that time, of the appellant paying the sum of \$8,670, he still made an order that compensation in that amount be paid by the appellant as directed by the Probation Officer. He further directed that the appellant's finances were to be placed under the officer's control. The appeal now brought is in respect of this order, not the sentence of 9 months imprisonment.

That an offender should pay compensation to anyone who has suffered property loss as a result of the offender's activities, is an excellent concept. There are certain principles which must be observed, however. It must be shown that the loss occurred and there must be no doubt that there was liability to compensate. Those points seem clear in this case. But, also, there must be a present or prospective ability to pay. Regard must be had to the means of the offender and only a realistic order should be made. It should not be for an amount which the offender will be unable to pay.

In this case, counsel for the appellant has pointed out to me that the appellant had been employed for a short time only before he was imprisoned. He has no assets. With an order such as this, there would be no incentive for him to settle down following the term of imprisonment. The principles that apply are recognised by the Crown and no more need be said as far as that is concerned. On the facts that are before me, I am satisfied that an order to pay compensation should not have been made. I had considered whether it should be for a reduced sum, but I am unable to see that there is any prospect of the appellant being able to pay any particular amount.

In the circumstances the appeal is allowed by quashing the order for the payment of compensation and the placing of the appellant's finances under the control of the Probation Officer.

A handwritten signature in dark ink, appearing to read 'H. C. J.', is written in the right margin of the page.

Solicitors:

R.A. Young, Hunter & Co., Christchurch, for Appellant  
Crown Solicitor's Office, Christchurch, for Respondent.