IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

GR.116/84

BETWEEN ROBERT RAYMOND LINDSAY WATSON

Appellant

A N D POLICE

Respondent

1564

**Hearing:** 19 November 1984

**Counsel:** Miss J.L. Ryde for Appellant
N.J. Scott for Respondent

ORAL JUDGMENT OF HARDIE BOYS J.

This is an appeal against a sentence of six months' imprisonment on a charge of burglary. Three young men were found inside a private house one night. They had got in by using an adapted key that one of them was carrying. This appellant maintains that it was his friend Douglas who made the entry to the house. It was Douglas who was found with the principal item stolen, a cassette unit, whilst this appellant had only a partly consumed coca cola can. Very little else was stolen. The Judge considered that this appellant ought to take equal responsibility with Douglas and on that basis he sentenced each of them to six months' imprisonment. Douglas had had ten previous convictions for burglary and for other charges of dishonesty, whilst this appellant, to give him the benefit of some doubt that arose, was on his fourth charge of burglary in addition to which he had had two other charges of dishonesty and a number of other convictions for offences of general disorderly behaviour or

lawlessness. I am told that the third member of the trio, who no doubt ought to have shared equal responsibility with the other two, received only three months' imprisonment. But the information on him is rather scant.

On previous occasions this appellant has been fined and sentenced to non-residential periodic detention and placed on probation. He has been in custody, and here again the record of his previous history is inconsistent, either once for 28 days for common assault and breach of periodic detention or twice: for those offences plus a term of 60 days for non-payment of fines. It would be helpful to the Court if official records such as this corresponded and I fail to understand why they do not. This offence was committed whilst the appellant was on probation followin his sentence of non-residential periodic detention on two or perhaps three charges of burglary in August of last year. There can be no doubt that imprisonment was necessary in his case, not only because this kind of burglary calls for that, but also because of his poor record of co-operation with community based sentences. The only question for me is whether a sentence of six months was manifestly excessive

The appellant complains of the fact that he was treated the same as Douglas and he also says that he has a child being born in December and that if he got out of jail before December he has good prospects of a shearing job. Once one accepts that a term of imprisonment is called for, then although six months may seem to be a severe penalty, it is nonetheless one that was within the proper range of

the District Court Judge's discretion and this Court is not entitled to tamper with a sentence that falls within those limits. Although I might myself have been disposed to impose a sentence which would have enabled this young man to get work over the summer, (and I interpolate I do not know whether that fact was brought to the attention of the District Court Judge; it may well not have been), the fact is that it is impossible to say that this sentence was manifestly excessive. Unless that can be said, an appeal against it cannot succeed. In those circumstances therefore the appeal must be dismissed.

**Solicitors:**

Bradley, Steven & List, TIMARU, for Appellant
Crown Solicitor, TIMARU, for Respondent.