NZLR. 2 6 6

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.No.515/84

685

BETWEEN STEPHEN JOHN WARD
Appellant

AND POLICE
Respondent

Hearing: 18 June, 1984.

Counsel: M.A. Abbott for Appellant
Miss Linda Shine for Respondent

Judgment: 18 June, 1984.

(ORAL) JUDGMENT OF VAUTIER, J.

The appellant, Stephen John Ward, pleaded guilty to and was convicted and sentenced in the District Court at Auckland on 26 March, 1984 in respect of two charges, the first that of theft of a motor vehicle and the second, cultivating cannabis. In respect of the first charge he was sentenced to six months imprisonment and in respect of the second three months, these terms to be served concurrently.

On behalf of the appellant Mr Abbott submits today that the Judge in so sentencing the appellant gave too much weight to the elements of punishment and deterrence in the sentencing process and paid insufficient regard to the element of rehabilitation. It is also submitted that he failed to give sufficient weight to the provisions of s.13 B of the Criminal Justice Act 1954. In respect of the statutory provision he referred to the decision in Police v.

Egden [1977] 1 NZLR 123 and as regards the question of the nature of the punishment imposed and the consideration to be given to the alternative penalties of periodic detention and community service, he referred to the recent decision of the Court of Appeal in The Queen v. Minto[1982] 1 NZLR 606, where the Court of Appeal stressed that it should not be overlooked that the community based sanctions to which I have referred are substantial penalties and must not be regarded as other than a severe punishment.

In supporting the appeal Mr Abbott has also referred at length to the facts and to the personal circumstances of the appellant and all that is said in the probation report as to his having shown a sense of responsibility with regard to his employment and displayed other qualities which indicate that he is not to be classed as a person lacking in all sense of responsibility.

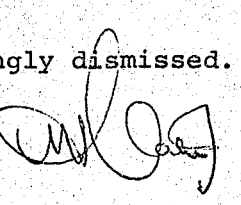
I have considered all these submissions carefully and in particular all that is said in the probation report. I must, of course, also have regard to the nature of the offences and the background of this appellant as regards offending and the view taken of the matter by the Judge in the District Court as shown by his remarks on sentencing. There are clearly here a number of contra indications to the District Court regarding this matter as one which should have been dealt with by way of periodic detention or a sentence of community service as counsel suggests. One notes, in the first place, that this appellant is aged 34 and clearly, therefore, should not be regarded as in the same category

as a very young and inexperienced person. The Court had to consider a charge of theft of a motor vehicle in circumstances which, as counsel for the respondent has pointed out, could only be regarded as a premeditated theft. The suggestion that this theft was committed because of a desire to be sure of having some transport available to and from the employment which the appellant had just obtained, of course, emphasises the question of the theft being a premeditated one. It clearly must, therefore, be regarded by this Court as it was by the Judge in the District Court as a serious offence and it was of course committed by a person with a previous conviction in relation to unlawfully getting into a motor vehicle and also, I note, a fairly long sequence of offences in relation to the driving of motor vehicles. Those offences in themselves show a serious disregard for authority and to my mind, militated against sending this particular appellant to periodic detention.

The factors as to the positive aspects of the career of this appellant were obviously in the Judge's mind but I am constrained, after considering all aspects of this matter, to the view that he clearly was correct in saying that the circumstances here really precluded any sentence other than that of imprisonment. There were two offences to be considered, both serious, both warranting in accordance with the legislative provision the imposing of substantial terms of imprisonment. The appellant had a previous conviction in respect of the cultivation of cannabis and indeed this offence occurring so soon after the convictions in respect of the other offences shown in this appellant's record tends

to me to indicate that he took no account of the lenient treatment which was imposed by his being fined on these several previous occasions. Accordingly, I am of the view that the Judge in this case can certainly not be said to have gone outside the proper limits of his discretion and I can not regard the effective sentence of six months imprisonment as excessive as is contended.

The appeal is accordingly dismissed.



SOLICITORS:

Meredith Connell Gray & Co. Auckland, for Respondent.