

7/1 N2LR X

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M. 490/84 and
491/84

1696 .

BETWEEN: MAC McLEAN TAMATI WHAIAPU
AND
EMMA TE WAINA WHAIAPU

Appellants

A N D: POLICE

Respondent

Hearing: 18 December 1984
Counsel: Ms Mills for Appellants
Mr Almao for Respondent

ORAL JUDGMENT OF BISSON, J

Mac McLean Tamati WHAIAPU was convicted in respect of two offences of burglary and sentenced to twelve months imprisonment. His wife was convicted in respect of one offence of burglary and also sentenced to twelve months imprisonment. They have both appealed against those sentences and their appeals have been heard together.

Sentencing notes from the District Court are not available as the tape proved to be inaudible.

The facts are that on 2 August 1984 both Appellants were jointly charged with burglary at Morrinsville when a dwelling

was broken into and antiques and silverware taken to a value of \$6,934.

On 19 August 1984 Mr Whaiapu burgled a house in Matamata, taking property, including a wallet, cash and jewellery, valued at over \$1,000.

Ms Mills, for both Appellants, has said that they committed these offences to solve their financial problems and that Mrs Whaiapu was rather an accessory than a principal offender.

There is Periodic Detention available in respect of both of them, as stated in the Probation Officer's reports. That being the case, such a sentence must have been considered by the learned District Court Judge, but rejected as ^{not} being appropriate. In particular, so far as Mrs Whaiapu is concerned, her offence was committed while already serving a sentence of six months Periodic Detention imposed on 28 May 1984. She has a large number of convictions for burglary and her husband also has similar convictions. They are to a small number and she has not offended in that direction since 1978.

Where two persons resort to a crime for financial reasons, it is a calculated, premeditated and deliberate act of dishonesty which must be met, in my view, where private property is invaded, by a term of imprisonment and I am not satisfied, the onus being on the Appellants, to satisfy this Court, that the sentences were either inappropriate or excessive. Accordingly, the appeals are dismissed.

W. S. Morrison J