IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.547/83

495

BETWEEN W WAITAIKI
Appellant

A N D POLICE
Respondent

Counsel: H. Roose for Appellant
C.Q.M. Almao for Respondent

Hearing and Judgment: 2 May 1984

ORAL JUDGMENT OF GALLEN J.

The appellant was convicted on 24 November 1983 on 6 charges of forgery, 6 charges of uttering and a charge of theft. The offences arose out of the theft of a radio and certain property which included a cheque book, the appellant and another having used the cheque book in order to purchase liquor to a total value of $376.33. I understand that the total amount so dishonestly obtained by the appellant has since been repaid so that no person has had any loss out of this incident. The appellant was fortunate enough to get a reasonable Probation report and the learned District Court Judge expressed his proper concern for the seriousness of the offences. Bearing in mind however the material relating to the appellant's personal situation and a concern that any penalty imposed which

interferred with the appellant's ability to work as a shearer might be unreasonably harsh, he gave away an original intention of imposing a period of periodic detention and instead decided to deal with the matter by the imposition of fines. He calculated the fines which he regarded as appropriate by the ingenious - and I think in the eyes of the community - a fair method of taking into account the earnings which the appellant would be able to achieve because he was not required to give up his Saturdays to attend at the Periodic Detention Centre. He had been informed that the appellant was earning a net figure of $100 per day and that that figure applied to Saturdays. On that basis, he worked out that the appellant would be gaining some 16 Saturdays and would therefore be earning some $1,600 that he would have been unable to earn if he had had to serve a period of periodic detention which the learned District Court Judge considered appropriate. He accordingly imposed fines on each of the 13 charges of $100 and ordered the payment of Court costs, making a figure which he pointed out was close to the $1,600 that he was enabling the appellant to earn by imposing fines rather than a setence of periodic detention.

There are two aspects of this which I think justify some change in the level of the fines which were imposed. I hasten to say that I think the approach of the learned District Court Judge was sensible and fair and designed, as far as possible, to ensure that the appellant was not unreasonably affected by any penalty imposed. However, it appears that the figure of $100 per day was not net but gross and that the actual amount which the appellant could be expected to receive was closer

to two-thirds of that and that does not take into account that it is in any event a much lower than average figure because there are certain periods in the year when earnings are lower. In addition, it does not take into account the recompense which was actually ordered as a part of the sentence and which has been paid. When this is added to the figures which were imposed, then it seems to me that the total is a little higher than one would have expected bearing in mind the nature of the offence and the amount of property involved.

In those circumstances, I propose to allow the appeal and to substitute fines of $65 in respect of each of the charges. The Court costs will remain the same and there is no need to make any order for compensation since recompense has now been made in full. There will be no order for costs.

Solicitors for Appellant: Messrs Boot and Roose, Hamilton

Solicitor for Respondent: Crown Solicitor, Hamilton