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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M 318/84

1210

BETWEEN ADRIANNE JACKIE WAHAROA

Appellant

AND POLICE

Respondent

Hearing: 3 October 1984

Counsel: Mr G. Wilson for appellant
Mr Morgan for respondent

Judgment: 3 October 1984

ORAL JUDGMENT OF HILLYER J

This is an appeal against sentence imposed in the District Court at Hamilton on 14 June 1984 by District Court Judge Green. Appellant was convicted of burglary on 14 March of this year, and released on probation for 15 months. That sentence would have expired on 13 June 1985. The offence for which that penalty was imposed was the breaking of the window of a pharmacy and taking items of cosmetics in plastic bottles. His co-offender was sentenced to two months imprisonment.

Appellant's response to probation has not been satisfactory and the probation officer applied to the District Court at Hamilton for sentence on the original charge.

On behalf of the appellant, Mr Wilson has suggested that the reason why the appellant did not attend pursuant to the probation officer's requirements was because he was unable to do so. He was in jail for failing to pay a fine. The probation officer makes no mention of that and I read the probation officer's report to mean much more than a simple failure to report, because he had been fined on 21 May of this year. The probation officer indicates that the total response to probation was unsatisfactory.

"Aimless existence and reluctance to make any changes in his lifestyle." Appellant also appeared for sentence on the charge of a theft of a wallet on 17 May. He was in a taxi, saw a wallet in the taxi driver's pocket and took the wallet, which contained the sum of \$200 in cash.

Appellant has a sad, lengthy history of offences, including seven or eight offences for theft for which he received various penalties, fines, probation, non-residential periodic detention, culminating in a term of imprisonment for two months.

The learned District Court Judge commented that appellant was not prepared to undertake periodic detention. Mr Wilson tells me that that was not a simple refusal on the part of the appellant, it was a comment that because of his lifestyle and his background, he did not consider he would be able to comply with the requirements of periodic detention. Appellant apparently is a transvestite with a long history of drug abuse.

The District Court Judge imposed a penalty of 12 months imprisonment. It is clear that on each of the charges, both the original charge of burglary and the latest charge of theft, that a term of imprisonment was called for. The real question is whether the period of 12 months was too long. In view of the fact that appellant had previously been sentenced to a term of no more than two months, I am of the view that the twelve months terms were manifestly excessive, and they are reduced to six months on each charge ; terms to be concurrent.

P. G. Hillyer
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P.G. Hillyer J.

Solicitors:
Mr G. Wilson for appellant
Crown Law Office for respondent