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BETWEEN

WALKER
ROBIN NEIL WALKER

Appellant

A N D

MAINTENANCE OFFICER

Respondent

Hearing: 3 July 1984

Counsel: Appellant in person
P J Morgan for Respondent

Judgment: 3 July 1984

ORAL JUDGMENT OF WHITE J

The appellant in this case was convicted and sentenced to four months' periodic detention in the Hamilton District Court on 15 February 1984 on a charge of failing to pay maintenance in accordance with an order of the Court.

The ground of appeal was that the appellant had not had sufficient income to pay his living expenses and bills and therefore was unable to make payments of maintenance.

The matter came before the learned District Court Judge on an application by the Maintenance Officer and an application by the appellant to remit all arrears under the maintenance order made on 17 September 1982, and to cancel, vary or suspend the order then in force.

The order for \$20 a week, which is the subject of the proceedings, was in respect of a child aged six. The appellant has paid no maintenance whatsoever under the order. Having considered the evidence and having listened carefully to what

the appellant has said, and also to the submissions of Mr Morgan, I find that the Judge's findings show - and I agree with them - that he had considered the evidence and was satisfied that the appellant was not in such financial straits that he could not pay maintenance. As Mr Morgan has pointed out, he had to consider the matter having regard to s 130(1) as to whether or not the appellant has or has had sufficient means to pay. The evidence before the Court, as has been pointed out, was the evidence which the appellant gave in answer to cross-examination from which it is clear that this was a small order and that no payment at all had been made in fourteen months. Further, on looking at the evidence which is carefully reviewed in the judgment appealed from, I consider the District Court Judge was entitled to reach a conclusion that the appellant has or has had sufficient means to pay monies in terms of s 130(1) of the Family Proceedings Act.

I have considered what has been said as to the production of the books. It is clear that the appellant had the opportunity to put before the Court accounts or books but this opportunity was not taken despite the notice that he had to that effect. At this stage, as I have said, on the evidence before the Court given by the appellant himself, it was properly found to be clear by the Judge that there had been funds available to pay maintenance under the order of the Court.

I have taken the opportunity of saying, during the hearing, that if the appellant does not understand this situation under the statute and does not understand what I am saying to him today, he had better take legal advice so that the provisions of the statute can be explained more fully to him.

On the evidence before the District Court Judge the conclusion I reach is that it has not been shown that the Judge was wrong in refusing to cancel, vary or suspend the maintenance order and that the appellant, in my view, was properly convicted and sentenced as I have indicated. Accordingly the appeal against conviction must be dismissed.

Again as to sentence, in my view, in the circumstances before the Court, it has not been shown that the sentence was manifestly excessive. In view of the sentence in this case it will be necessary in view of the appeal following sentence, for a direction to be given as to reporting to be varied to 6 pm on Friday of this week, 6 July 1984.

P. White.