

BETWEEN KEREPE WIREMU PATUAWA  
Appellant

A N D BRIAN JAMES BALLANTYNE  
Respondent

Hearing: 19 October 1984

Counsel: W.J. Wright for Appellant  
A. Broad for Respondent

Judgment: 19 October 1984

---

ORAL JUDGMENT OF HOLLAND, J.

---

The Crown, with the consent of the Solicitor General, has appealed against a sentence of nine months' imprisonment imposed on the respondent upon his plea of guilty to charges of burglary, possession of instruments for burglary, and presentation of an imitation firearm with intent to resist arrest. In the course of his submissions counsel for the Crown has submitted both that the sentence was manifestly inadequate and was imposed on a wrong principle.

Appeals by the Crown against sentence are rare and so they should be. The Court will always be reluctant to increase a sentence that has been imposed by another Court, and I emphasise what has clearly been stated by the Court of Appeal and this Court on a number of occasions that a sentencing Judge must have the freedom in accordance with his own judgment from time to time to impose a sentence that is merciful where the circumstances of the case warrant it.

This is a case of burglary of a pharmacy by a drug addict with the use of a starting pistol which in fact was used when he was accosted by the police. The appellant

is very properly here in person, although he has of course been represented by counsel, but I want him to know that at least in Auckland where I have recently been sitting, armed burglaries of chemist shops had become so prevalent that it was stated in Court that the appropriate sentence could be in the range of four years' imprisonment. I know of nothing that would justify the Court in departing from that statement. The Court can only have sympathy for people who are dependent on drugs, but the Court has an even greater obligation to society and sadly, (as in this case where the respondent has had lenient treatment from the Court in the past because of his drug dependency, has on at least three occasions been given treatment for drug dependency without success, and he continues to behave in this manner) the Court is left with little freedom, and with respect to the District Court Judge who imposed sentence and who has of course considerable experience, I am satisfied that the sentence that he did impose was manifestly inadequate, and in saying that he reduced substantially the term of imprisonment that might otherwise be appropriate if it were not for the drug background of the respondent's offending he was in the circumstances applying a wrong principle.

In the case of a person dependent on drugs up for the first or second time for an offence of this nature where there is a reasonable prospect of curing the drug dependency obviously there is room for a merciful sentence. Sadly, in the case of this respondent those grounds do not exist. The respondent is an unfortunate man. He has gone on for years being in trouble because of dependency on alcohol and drugs. But he is worse than a mere menace to society. He is a real danger to society. He has been convicted on five

occasions in the last ten years of being unlawfully in possession of a pistol. In addition to that of course there are a number of charges of burglary, assaults and assaults on policemen.

I am satisfied that it is the duty of this Court to increase the sentence. It is appropriate, however, that it should not be increased to the sentence that this Court would have imposed if this Court had been the original sentencing Court, and indeed the amount of the increase will be to a sentence substantially less than this Court would have imposed for the offence. I do that because I am satisfied that on an appeal by the Crown the sentence should be increased to no more than the absolute minimum that could have been regarded as appropriate for this offender in relation to these offences.

The appeal is allowed. In lieu of the sentence of nine months' imprisonment on each charge the sentence is one of 18 months' imprisonment.

*A D Holland J*

IN THE HIGH COURT OF NEW ZEALAND  
DUNEDIN REGISTRY

No. M.116/84

BETWEEN KEREPE WIREMU PATUAWA  
Appellant

A N D BRIAN JAMES BALLANTYNE  
Respondent

---

ORAL JUDGMENT OF HOLLAND, J.

---