

M.15/84

BETWEEN:

WALTER KENNETH WATSON
of Hamilton, Unemployed

Appellant

A N D:

POLICE

Respondent

Offence: Using a Document to obtain Pecuniary Advantage (8)
Taking a Document (2)
Unlawfully taking a Motor Vehicle (1)
Burglary (1)
Theft (1)
Attempted Unlawful Taking (1)

Dealt With: 7 December 1983 At: Huntly
Sentence: Imprisonment 2 years in total

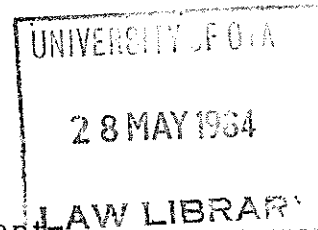
By: Latham, DCJ

Appeal Hearing: 16 February 1984

Oral Judgment: 16 February 1984

Counsel: S Thwaite for appellant
C Q M Almao for respondent

Decision: APPEAL ALLOWED - Imprisonment of 2 years.
varied to Imprisonment for 1 year



(ORAL) JUDGMENT OF BISSON J.

On the 7th December 1983 the appellant was sentenced in the District Court at Huntly as follows :

"In respect of each of the charges of using and taking documents you are sentenced to imprisonment for 12 months.
In respect of the charge of unlawfully taking a motor vehicle you are sentenced to 6 months imprisonment cumulative on the terms already imposed.
In respect of the charge of burglary, you are sentenced to 6 months imprisonment, again cumulative upon the terms already imposed.
... In respect of the conversion charges and the theft of the bicycle, 6 months - concurrent with each other but cumulative upon the other terms.
The effect is 2 years in all."

In September 1983 the appellant was 18 years of age and he came before the Court then in respect of six charges of using a document unlawfully and on a charge of theft. The document in question was a Farmers Trading Company credit card which he had found and he made use of that to a total value of \$311.74. He had stolen the bicycle and sold it. The bicycle was recovered and the sentencing was adjourned for 3 months to enable the appellant, who was then in work, to pay compensation in respect of the credit card offences. However during that period of time he committed these further offences, one involving burglary and the attempted unlawful taking of a motor vehicle, and another two charges of using a document and two charges of taking a document. He stole two cheques from an associate and used them to deposit \$300.00 in his own Savings Bank account, the money later being withdrawn and spent. So far as the burglary charge was concerned, he and an associate forced entry into a garage building and attempted to take a motor vehicle, which was stored there. Two Probation Officers' reports have been provided, the first concluding that:

"... in view of all the above circumstances the Court may wish to adjourn these matters with a view to assessing any progress in (the appellant's) behaviour in the coming months."

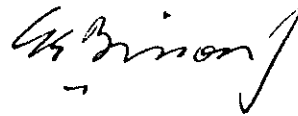
Well that was done. So he was given a chance to redeem himself. Unfortunately he went from bad to worse, and the next Probation Officer's report says this:

"In view of his repeated offending there seems little purpose in considering any community-based measures."

So that it was really inevitable that this young man should face a term of imprisonment.

Mr Thwaite, in presenting the case for the appellant on appeal, has submitted that overall a sentence of 2 years imprisonment is clearly excessive and when one considers sentences which have been imposed in more serious cases involving dishonesty it does seem to show quite a marked disparity for the amount involved.

In those circumstances I take the view that the sentences should not have been cumulative and that an overall sentence for the totality of the offending would have been 12 months imprisonment. Accordingly the appeal is allowed, and the sentences are varied so that they will all be concurrent with each other, and none cumulative.



Solicitors:

McDermott & McIntosh, Huntly, for appellant
Crown Solicitor, Hamilton, for respondent