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BETWEEN R.K. MORGAN

Appellant

A N D POLICE

Respondent

Hearing : 22nd March 1984

Counsel : Mr Bayliss for Appellant  
Miss Shine for Respondent

Judgment : 22nd March 1984

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(ORAL) JUDGMENT OF BARKER, J.

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This is an appeal against conviction and sentence. The appellant was sentenced in the North Shore District Court on 10th February 1984 to 4 months' imprisonment on 2 charges to which he had pleaded guilty; one of car conversion and one of theft of 2 wheel assemblies.

When this matter was in my list for 20th March, no counsel appeared for the appellant; I noted that the transcript of proceedings in the District Court did not reveal that the appellant, who was unrepresented in that Court, had been given the option of applying for legal aid. The District Court Judge may well have said something to the appellant to this effect, but there is certainly no record. I observe that where a person is sentenced to imprisonment, the record should always state the fact that he has been offered legal aid and declined.

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Nor could I find anything on the record of the information to indicate that he was legally assisted at the time of his sentence, although in respect of the information of car conversion, there was a rubber stamp saying that at the time he first appeared, he was legally assisted within the meaning of Section 13A of the Criminal Justice Act 1954.

Further enquiries revealed that Mr Bayliss had been assigned to him in the District Court, but for some reason or another, Mr Bayliss had not been told of his appointment; consequently, he did not appear on sentencing.

In those circumstances, I consider that I should treat the appeal against sentence as if I were dealing with the sentencing at first instance, rather than on an appeal basis. Mr Bayliss acknowledges that there is no possible ground for the appeal against conviction which is formally dismissed.

So far as the appeal against sentence is concerned, the appellant was sentenced to 4 months' imprisonment on each charge, followed by one year's probation on special terms.

The appellant is aged 20. He has a list of previous convictions. One of the offences was serious in that he deliberately stole some wheel assemblies from a car because he was short of money. He seems to have had a checkered employment history but counsel suggests that he wants now to complete a course as a marine steward. The Probation Officer calls him a "lonely, frustrated person who has responded to probation in the past"; it is felt that the support and understanding available from the probation service would be important.

In all the circumstances, including the fact that he has now been 6 weeks in prison serving the sentence imposed, I think the proper course would be to vacate the sentence of imprisonment and instead to substitute a sentence of Periodic Detention. Mr Bayliss on behalf of the appellant waives medical examination.

The appellant is therefore sentenced to 5 months' Periodic Detention. He is to report to the Periodic Detention Centre at Birkenhead at 6 p.m. tomorrow, Friday, 23rd March, in accordance with a notice that will be given to him by the Registrar before he leaves Court today. He is also to report in accordance with any instructions that may be given by the Warden of the Periodic Detention Centre. In addition, he is placed on probation for a period of 15 months with the special terms:

- (a) That he live and work as directed by the Probation Officer;
- (b) That he pay \$200 compensation under the supervision and direction of the Probation Officer; and
- (c) That he take such counselling and/or treatment for alcoholic liquor and/or drug problems that the Probation Officer may direct.

SOLICITORS:

Skelton & Co., Auckland, for Appellant.

Crown Solicitor, Auckland, for Respondent.

*R. J. Barker*

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IN THE HIGH COURT, OF NEW ZEALAND  
AUCKLAND REGISTRY

M.222/84

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copies to counsel 2-3-84