



allowed him into her bed where intercourse took place. When the complainant awoke next morning at 8 a.m. the Appellant was still there. She then, with the assistance of her flat mate, summoned the police and when they arrived the Appellant was still in her bed asleep. I am advised that a charge of rape laid against the Appellant was dismissed without a trial. There was no suggestion that the Appellant when he entered the building intended to commit theft or a like crime. I can only assume that, having been convicted of the burglary count, the learned District Court Judge found that when the Appellant entered the building he intended to commit rape even although the charge of rape that was made was dismissed.

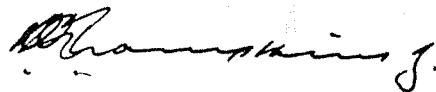
The Appellant has had a number of previous convictions, but with the exception of one of obstructing the police in December 1980, and driving while disqualified in April 1977, all the others were in 1975 or earlier. Two of them were similar to those with which the court is now concerned, one of being found in a building without intent in May 1973, and one of indecent assault on a female in September 1974, both of which were dealt with in the Children and Young Persons court. The Probation Officer's report describes the effect that excess alcohol consumption seems to have had on the life of the Appellant now for a number of years. I am satisfied that it was alcohol consumption that played a large part in the offences to which these appeals relate. The Probation Officer's report records that the Appellant is eligible for non-residential periodic detention and would respond well to such a measure should the court so decide.

I do not find this an easy appeal to determine. Undoubtedly burglary is a serious crime. It could well, particularly in view of the Appellant's previous history, justify a sentence of imprisonment, but this does not seem to me to be what one might describe as the more normal type of

burglary. Accepting, as of course I do, that the Appellant had no right to be where he was, and that the intercourse with the complainant was without her appreciating his identity, there are not otherwise elements of the type of conduct that one would expect to find in this sort of case. Miss Mills, for the Appellant, now says that he has recognised the importance of his reducing his alcohol consumption, and I only hope that if this court extends to him a further opportunity he realises that this may well prove to be his last chance to get some order and sense of responsibility into his life.

I have decided that under the circumstances I will allow the appeal, quash the sentence, and in its place impose a sentence of nine months non-residential periodic detention. The Appellant is to report to the periodic detention centre in 1

and thereafter on such number of occasions in each week as may from time to time be specified by the Warden.



Solicitors:

Crown Solicitor, Hamilton, for Respondent.