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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. M.715/84

1632

BETWEEN

BROWN

Appellant

A N D

POLICE

Respondent

Hearing: 11 December 1984

Counsel: E. Bedo for Appellant
B.M. Stanaway for Respondent

Judgment: 11 December 1984

ORAL JUDGMENT OF HOLLAND J.

The Appellant appeals against a sentence of six months' imprisonment imposed on him in the District Court on 2nd November 1984 on a charge of receiving four video recorders. The offence occurred between the 6th and 8th September 1983.

The task of deciding the appropriate sentence for this man was not an easy one. After the receiving offence had been committed he was before the Court on a charge of aggravated assault and burglary. In respect of those offences he was on 18th October 1983 sentenced to six months' imprisonment. He was released from that sentence of imprisonment on 29th February 1984. Some eight months before he was brought before the Court for sentence on an offence committed fifteen months previously.

The Appellant has clearly had problems with drug abuse. The Probation Officer's report available before the Court when he was sentenced on earlier occasions emphasises

that, as does the present Probation Officer's report, but it is significant that the Probation Officer has said:-

> "He no longer seems to be active as a criminal, probably because of his new family commitments in the main. Drug abuse has continued to be a problem this year, but he does seem to have made an effort to overcome that problem since the last offence."

The probation report goes on to say that so far he appears to be doing reasonably well despite a couple of lapses which he has volunteered of his own accord. It concludes:-

> "Because of the date of the offence, and Mr Brown's personal situation as regards his young family and job prospects, a custodial sentence is seen as detrimental to his progress, notwithstanding the seriousness of the offence."

It should be said that he is now in a permanent relationship with a young woman and he has a child of some few months. More importantly to me, he was on the waiting list for employment at the Freezing Works and it appeared probable that a job would be available to him.

The District Court Judge applied the right principles. In a case such as this where the offence was an old one and there had been an intervening sentence it was proper for the District Court Judge to consider what would be the appropriate sentence if he was before a Court on all the charges at the one time and it could not possibly be said that a sentence of twelve months' imprisonment for all three offences was wrong. That in effect is what the District Court Judge did by imposing a sentence of six months' imprisonment on this charge, the Appellant already having served six months' imprisonment.

I share the view of the District Court Judge that receiving is an offence which must normally carry with it a sentence of imprisonment, and that is particularly true where

the receiving is of matters such as video recorders which are being stolen and disposed of daily. There were two other offenders in respect of the receiving. One was sentenced to two months' imprisonment cumulative on a term of fifteen months he was already serving. The other was sentenced to twelve months' imprisonment, concurrent with an eighteen month term he was serving but part of which had already expired so that effectively he was having an extra two months. This meant that the co-offenders' total offending received seventeen months' imprisonment and twenty months' imprisonment as against the Appellant's twelve.

Although the appeal was based essentially upon an allegation of disparity of sentence, no ground exists to interfere with the sentence on this count. It is important that the sentences of co-offenders bear some relationship to each other but it is also important that the personal circumstances of the offenders be considered. In the case of the present Appellant, I am satisfied that it was in the interests of the public generally as well as the Appellant that he should receive recognition from the Court for the attempts that he has made to reform himself since his recent period of imprisonment.

It was submitted by counsel for the Crown that that aspect was considered by the District Court Judge and in the end the issue is one of balance between the public need to impose an effective sentence of punishment for receiving stolen goods and the personal circumstances of the Appellant. That is undoubtedly correct but, in the circumstances of this case, I am of the view that the District Court Judge placed too much emphasis on the deterrent aspect of the sentence rather than the hope of reform of the Appellant. Of the three co-offenders the Appellant was relatively speaking a babe-in-arms in the criminal world. The statement of facts shows that he agreed to store four video recorders and for this one was to be his. The statement of facts does not indicate that he took part in purchasing from the thief or thieves or that he took an active

part in the receiving, except for one set.

I am satisfied that he should be encouraged to reform. He has now spent effectively six weeks in prison under the sentence which I am about to quash. Taking that into account I am of the view that the appeal should be allowed and it is allowed accordingly. The sentence is quashed. In lieu of the sentence of six months' imprisonment he is ordered to be brought up for sentence if called upon within two years.

I must ask that his counsel explain to him the effect of that sentence which is, of course, that if he does not offend during that period nothing further will come in respect of this offence. If he does, however, offend he can be brought before the Court and the sentence appropriate to the offence which the District Court Judge imposed can then be imposed in respect of the offence. The matter is entirely over to him.

The appeal is allowed and the sentence is quashed and substituted with the sentence which I have just set out.