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IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY

M.554/83

NZHR  
X

284

BETWEEN:

COOK  
of Hamilton, Student

Appellant

A N D:

THE POLICE

Respondent

Offence: Theft  
Dealt With: 29 November 1983 At: Hamilton By: Latham DCJ  
Sentence: To Come up for Sentence if Called Upon  
Restitution \$500.00

Appeal Hearing: 16 February and 28 March 1984

Oral Judgment: 28 March 1984

Counsel: Miss P A B Mills for appellant  
C Q M Almao for respondent

Decision: APPEAL ALLOWED - IN PART  
Restitution of \$500 reduced to \$100

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(ORAL) JUDGMENT OF BISSON, J.

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This appeal against sentence is made by a boy 15 years of age, sentencing being removed from the the Children and Young Persons Court to the District Court. The offence related to the opening of a school strong-room by the appellant on the 21st July 1983 when he stole \$500.00. He and another boy spent this money mainly on clothing and some of the goods have been recovered and are held by the Police and, when auctioned, some compensation moneys will be available for those who have suffered loss.

In dealing with this appellant, the learned District Court Judge had regard to the fact that he had already in respect of other offences been sentenced to non-residential

Periodic Detention and a period of Probation, and in respect of this offence of burglary, involving the sum of \$500.00, the appellant was ordered to come up for sentence if called upon within 12 months and make compensation of \$500.00 to the High School from where the money had been stolen.

The appeal raises the question whether the amount of compensation was excessive, or indeed, whether any such order should be made at all. When the appeal first came before the Court on the 16th February last, I called for further information because the Court would need to know the ability, present or prospective, of the appellant being able to meet an order for compensation and at the time it was not clear whether he was still suffering from an accident and for how long he might be out of work.

I am now informed by his counsel, Miss Mills, that he has been able to return to his after-school work, earning \$8.00 per week nett. He has paid all, bar \$7.00, of other orders for compensation totalling \$102.00, having met such payments at the rate of \$5.00 per week out of his nett earnings. This is not a case where an order for compensation would in effect fall on his parents who would readily pay it, and as a result have no impact upon the appellant. The attitude of the appellant's parents is that they are unwilling to assist, and that the appellant must stand on his own two feet. It does appear, however, that the offending may have been partly induced by aspects of this young man's treatment in the home. Taking all those factors into account, I am satisfied that an order

for compensation of \$500.00 is excessive, but that it is appropriate that some reasonable amount within the earning capacity of this young boy should be ordered so as to bring home to him that money cannot be obtained freely by a crime without having to suffer some punishment, and as orders for compensation can be recovered in the same way as the imposition of a fine, it is in some ways equivalent to a fine, while at the same time having the beneficial effect of to some extent compensating the person, in this case the school, which has suffered from the crime itself.

The appeal is allowed and the order for compensation reduced to one of \$100.00, payment to be made by such instalments as directed by the Probation Officer.

*G. B. ...*