

IN THE HIGH COURT OF NEW ZEALAND

M. 1445/84

AUCKLAND REGISTRY

BETWEEN

TIMOTHY JOHN COYNE

1553

APPELLANT

A N D

THE POLICE

RESPONDENT

Judgment: 12 December 1984

Hearing: 12 December 1984

Counsel: Lorraine Smith for Appellant  
Linda Shine for Respondent

---

ORAL JUDGMENT OF CASEY J.

---

This is an appeal against sentences totalling 18 months concurrent on four counts of theft, five counts of fraud and two counts of disqualified driving. The Appellant appeared in the District Court and pleaded guilty. His past record discloses that he had previously been sentenced to 2 years 3 months in 1980 for a large number of offences, some of which were substantially of the same character. In 1982 he appeared again on a charge of theft, unlawful acquisition of a firearm and other matters, and was given probation for twelve months. It is therefore, as the learned Judge said in the Court below, a depressing past history and he noted his failure to respond to the leniency of probation which had been extended to him two years earlier.

Mrs Smith makes a number of points on appeal. First of all, she said that the learned Judge was acting merely on an up-dated probation report made some four months before he appeared, and although she conceded that not much information could be added, a fuller report might have thrown light on his current psychiatric problems. It is quite apparent from the detailed remarks made by the sentencing

Judge that he fully appreciated the psychiatric troubles from which this young man is supposed to have suffered, and took these into account. I do not think the furnishing of an up-dated report in the circumstances would have helped him much or made any difference to his approach, particularly in the light of the letter which Mrs Smith has put before me of 6th December from the Superintendent of Carrington, with a summary of his history there.

The second complaint made in the notice of appeal was that insufficient consideration had been given to the plea of guilty, but as Counsel concedes not much can be made of this, because again it is clear that the Judge took into account the Appellant's responsible acceptance of his position and his acknowledgment of the offence. She then complained that not enough consideration had been given to the restitution which had in fact been made and the co-operation which the Appellant had extended to the police during their enquiries. She says that these matters were not really covered in the sentencing remarks and suggests they were not properly put before the learned Judge and may well have influenced the level of sentencing. She has taken matters into her own hands and written to the Crown Solicitor drawing their attention to a letter written to her by the Appellant from prison, in which he details the help he gave. Certainly it demonstrates a significant level of assistance. Although Miss Shine acknowledges that he did assist the police in the recovery of money, clothing and the car, she says not all the items have been recovered and certainly he endeavoured to put them off the track. It was only when they discovered his true identity that he opened up to them. However this, I think, is a facet of the matter which it appears was not put fully to the learned Judge below, and as I have indicated, may well have influenced him in the sentence.

The next matter that Mrs Smith raises is the psychiatric history demonstrated in the report from Carrington which she has put before me. Although it is not signed, I

accept her assurances that it is indeed a copy of the one they had intended to supply her. His past history certainly demonstrates psychiatric or personality problems and a number of admissions into Carrington, but it also suggests that the latest episodes in which he required treatment were drug induced. I must say on looking at this and at the past history of his offending, and the way he has been dealt with, that the report does not influence me towards accepting that the lack of responsibility arising from his personality or psychiatric defects make a prison sentence inappropriate; or that there is any realistic hope he would co-operate in any future treatment, having regard to the opportunities he has had in the past; or that treatment would affect the course of his criminal activities, the record of which demonstrates a fixed resolve to offend and evidence of cunning and careful planning to exploit those tendencies. As I have mentioned previously, it is clear from his decision the Judge did give careful attention to matters of this nature in sentencing him. I see no justification on this history to reach any different view on the matter from that which appealed to him.

The final submission is that the sentence was manifestly excessive in the circumstances, and that a more appropriate way of dealing with him might have been in such a way that he could have the opportunity to receive treatment for his problems, rather than sending him back to prison. I simply cannot agree with this. I can only echo the Judge's comments at p. 4 of his remarks on sentencing, after noting the problems he had and his drug and alcohol difficulties, that the community must be protected and large scale criminal activity of this type must be deterred. He felt (rightly, I think) that imprisonment was the only appropriate means of doing this. When one regards the variety and extent of his offending on this occasion and his past record, those comments are fully justified. The Judge fairly accepted that, as a relatively young man of 27 and having already undergone a lengthy term of imprisonment, the ends of justice could be met in this case by a lesser term than the previous 2 years and 3

months, and he accordingly imposed sentences totalling 18 months. It is difficult really for me to find anything to criticise in the way he approached his task, but I am prepared to accept Mrs Smith's submission that the extent of his co-operation with the police and of the restitution, may not have been put before him in the same way as it has been presented to me in this appeal. The Courts recognise, of course, that such co-operation can and should properly be taken into account in suitable situations in mitigation of sentence, not only in recognition of an accused's sense of responsibility, but also as an encouragement to others to act the same way.

I have reached the conclusion, therefore, that while a prison sentence was the only appropriate one for this young man, the extent of his assistance to the police should be recognised by some reduction. I propose allowing the appeal to the extent of reducing the sentences of 18 months imprisonment to 15 months.

*M. G. Casey*

Solicitors:

L.O. Smith, Auckland, for Appellant  
Crown Solicitors Office, Auckland, for Respondent