IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M 175/84

BETWEEN DAVIDSON

Appellant

A N D POLICE

Respondent

M 176/84

BETWEEN WALL

Appellant

A N D POLICE

Respondent

M 177/84

BETWEEN LOGIE

Appellant

A N D POLICE

Respondent

Hearing: 4 July 1984

Counsel: P R Connell for Appellants
P J Morgan for Respondent

Judgment: 4 July 1984

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ORAL JUDGMENT OF WHITE J

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These three cases have been heard together. The appellants are appealing against fines imposed in the District Court at Hamilton on 24 April on a charge of burglary.

I have today heard the addresses of counsel and Mr Connell has very carefully explained to me the circumstances and has been able to explain them somewhat more fully, as far as the characteristics and positions of the three appellants are concerned, than was possible before the District Court. And he has handed to me for my perusal testimonials which quite clearly confirm his submissions as to the history of these three young people.

The facts very briefly were that the three appellants took part in a stupid escapade in which they went into the yard of a firm in the city with some idea of acquiring a flashing light to place on the car belonging to one of them.

In sentencing the Judge made it clear that what had taken place was, in his words, "far short of burglary", meaning, I think and as I have indicated during the hearing, that while technically there were the ingredients of burglary, what took place was at the very bottom of the scale, and was something which should not be characterised by the implications of the serious crime of burglary.

I note in considering the matter at this stage, that the three appellants and their parents, who have apparently shown a very proper responsibility by their attendance at the hearing, all indicate that what took place in this case and the results of it has been a very serious lesson through the conviction for this offence.

Having listened to what has been said as to the conduct of one of the girls while in the court, which must have affected the Judge, as he said himself, to some degree, as to their attitude that anything that gave the impression of amusement on her part was unlikely to be due to anything but nervousness, has been explained. I take that into account.

As far as dealing with the matter is concerned, it was a difficult matter for the learned District Court Judge.

It was submitted to him that the appellants could be discharged under s 42 of the Criminal Justice Act which he declined to do. Mr Morgan has correctly drawn attention to the proper principles to be applied as to that and I do not feel that this is a case where I should discharge them under s 42. On the other hand, I think that in the manner in which this case is now before me, that the full import of it has been more fully explained - all three took part in a stupid escapade; there was no question of any previous offending; they had never been in trouble before; there was no question of liquor; it was purely a case of stupidity. I consider the conviction is sufficient in itself, plus in my view an order for contribution towards the costs of the case. The sentences are accordingly quashed and I substitute an order that the appellants together be responsible for a contribution of $150 towards the costs of the case.