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BETWEEN

ELLMERS

Appellant

A N D THE POLICE

Respondent

Hearing: 28th March, 1984.

Counsel: Miss C. M. Grice for Appellant.
C. O. M. Almao for Respondent.

Judgment: 28th March, 1984.

ORAL JUDGMENT OF TOMPKINS, J.

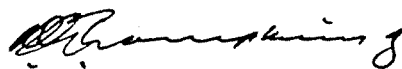
The Appellant has appealed against a sentence of three months non-residential periodic detention imposed in the District Court at Hamilton on the 8th February, 1984. The Appellant had pleaded guilty to a charge that on the 23th December, 1983, he did steal one ewe valued at \$20, the property of person or persons unknown.

It appears that on the evening of that day the Appellant and the defendant Fraser, who was also convicted of the same charge, were travelling along Puketona Road towards the Lilly Pond Motor Camp where they were staying, and in the course of doing so they caught an ewe which they then placed in the boot of their car, returned to the motor camp, the Appellant slaughtered it and some meat was cut from it which the defendants then barbecued. The carcass was dumped in an adjoining river. It had been beheaded and thus could not be identified by ear tags or marks. The Appellant and his co-defendant admitted the theft, their only explanation being that they had been drinking prior to the offence.

The Probation Officer's report shows that the Appellant has had no previous convictions, that he is in employment, and I have before me a letter from his employer certifying to his honest, hardworking and diligent nature.

The learned District Court Judge commented that in the ordinary course a fine would have been appropriate but that neither the other defendant nor the Appellant were really in a position to pay a fine, and balancing the other defendant's previous convictions against the Appellant's major role, led him to the view that both should be treated alike and that periodic detention for a short term was the appropriate sentence. An agricultural community such as the Waikato must always be concerned that, what must colloquially be known as cattle or sheep rustling, theft of animals in the way that was done here is difficult to detect, and it is well known that farmers suffer considerable stock losses through thefts of this kind.

Taking into account the Appellant's blame free past, and the support that he has from his family, I am not satisfied that the sentence imposed by the learned District Court Judge of a short period of periodic detention is inappropriate. Hence the appeal will be dismissed. The Appellant is to report to the Periodic Detention Centre at Hamilton at 6 p.m. on Friday, the 6th April, 1984.



Solicitors:

Harkness, Henry & Co., Hamilton, for Appellant.

Crown Solicitor, Hamilton, for Respondent.