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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. M.569/84

1656

BETWEEN MARK ANTHONY EATHORNE

Appellant

A N D THE POLICE

Respondent

Hearing: 7 November 1984

Counsel: Miss E.H.B. Thompson for Appellant
B.M. Stanaway for Respondent

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(ORAL) JUDGMENT OF COOK J.

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The appellant pleaded guilty in the District Court to the theft of a motor vehicle to obtain which he had to break into a yard and then drive the vehicle away. From the facts there can be no doubt as to his intention to steal the vehicle in question. He painted it and altered it, put on registration plates from a vehicle which he owned himself and then some six weeks elapsed before it was recovered. He came before the District Court on that charge and also on two charges of burglary.

In his remarks on sentencing, the District Court Judge noted that the theft had been done with considerable planning and that the vehicle in question had been reduced quite substantially in value. He recognised that the particular offences for which he had to sentence the appellant had been committed prior to certain other offences for which the defendant had been sentenced to non-residential periodic detention and considered that he should regard the matter as the Judge would have at the time of the earlier sentencing, had

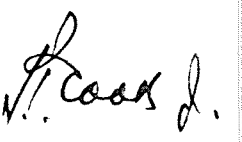
all the charges been before him then. He regarded a custodial sentence as the only one appropriate and took into account the fact that he was, in effect, cancelling the balance of the periodic detention. On each charge of burglary the appellant, and also his co-offender in respect of those charges, was sentenced to 12 months imprisonment and for the theft of the vehicle the Judge imposed upon the appellant, who was the sole offender in respect of that charge, to a further four months, that is, a term cumulative upon the 12 months. It is against this latter sentence that the appeal has been lodged.

I have read the probation report. I note the circumstances of the appellant - the fact that he is now 27 and that at the time of sentencing he was not considered suitable for a further sentence of non-residential periodic detention. He has a certain number of prior convictions - in 1983 false pretences, for which he was sentenced to 4 months non-residential periodic detention, and then in 1984 the earlier charge of burglary to which he was sentenced to five months.

Counsel for the appellant has made a strong plea in his favour but, of necessity, it is based on humanitarian grounds. She has urged that the 4 months term should be made concurrent with the 12 months. The appellant is on pre-release work and it seems there is reason for concern for the welfare of his wife and three children. He has been described as a model prisoner and letters have been produced as to the work he is doing and as to the situation so far as his wife is concerned.

It is pointed out by the Crown, however, that the sentence imposed was not inappropriate nor could it be said to be manifestly excessive. The theft of the motor vehicle was a quite separate offence having no connection with the burglaries. I am unable to see that the 4 months was inappropriate or manifestly excessive and had it been made concurrent with the 12 months, from a practical point of view,

no penalty would have been imposed at all. I think the District Court Judge, having that question to decide, was correct in what he did. One has sympathy for the appellant and, of course, for his family, but it would not be proper to allow the appeal and it must be dismissed.



Solicitors:
Harper, Pascoe & Co., Christchurch, for Appellant
Crown Solicitor's Office, Christchurch, for Respondent.