IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

M.No.22/83

BETWEEN BURGESS

Appellant

AND THE QUEEN

Respondent

Hearing: 4 May, 1984.

Counsel: Appellant in person.
C.P. Ramsdale for Appellant.

Judgment: 4 May, 1984.

(ORAL) JUDGMENT OF VAUTIER, J.

The appellant Burgess was convicted in The District Court at Kaikohe on 25 January, 1984 following his plea of guilty to a charge of stealing 4.5 litres of petrol valued at $3.20 from the named complainant. The summary presented to the Judge which the appellant today accepts as a correct statement shows that in the early hours of the morning the appellant was seen acting in a suspicious manner in Hillcrest Road, Kaikohe and to take a can and a hose from his own vehicle and then siphon petrol from a parked vehicle. When disturbed in the course of doing so he drove off but was stopped by the Police a short distance away. The only explanation offered by the appellant which he repeats before me today is that he did not have much petrol left in his car and there were no service stations open and he therefore felt obliged to steal petrol to enable him to continue on his way.

The appeal is directed to the penalties imposed which were a fine of $100 plus a disqualification from holding or obtaining a motor driver's licence for a period of four months. That disqualification was suspended by the Judge on 23 February, 1984 pending the hearing of this appeal.

The appellant at the time was a sickness beneficiary and today says that he is still in this situation and that the disability from which he suffers is a form of epilepsy.

The appeal is, according to the appellant's letter addressed to the Court, not against the amount of the fine although the appellant describes that today as excessive in his view, but against the suspension of licence. The appellant puts forward that this will occasion undue hardship because of the fact that he relies on the use of this motor car to carry out various missions which he describes are involved with the care of so-called street kids and transporting such people from place to place.

The offence in question is one for which the maximum term of imprisonment prescribed is three months. In relation to the penalty imposed, it is to be noted that the Judge had before him the record of the various convictions which this appellant has, none of which however as he correctly points out today is a conviction for theft. He disputes that he was properly convicted in respect of some of these matters. That aspect, however, I think, has very little relevance and is unlikely to have had any real influence on the Judge in imposing the penalty. The situation is that this was one of those mean

types of theft which are very difficult to detect and in my view the imposing of a fine of $100 was by no means to be regarded as an excessive penalty.

As regards the disqualification, this of course was an offence committed in relation to the operation of a motor vehicle and it is clear that the Legislature by various provisions introduced into the law of recent times has indicated very clearly that it is considered that the penalty of disqualification which can be a real penalty should be resorted to by the Courts wherever possible. I think this was an appropriate case for that to be included in the penalty. As it happens, in the present case the appellant, being a sickness beneficiary, the Judge was certainly not thereby imposing any detriment upon the appellant as regards earning his livelihood.

The other matters to which reference is made are not such in my view to warrant my disturbing the proper penalty which I conclude was imposed.

The appeal is accordingly dismissed.

I direct however, that the suspension of the operation of the disqualification order remain effective until 6 May. Thereafter the disqualification is to operate so that it will be operative in all for a period of four months.

SOLICITORS:
Marsden Woods Inskip & Smith, Whangarei, for Respondent.