

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. M.688/84

BETWEEN

BUSBY

Appellant

A N D CHRISTCHURCH POLICE

Respondent

Hearing: 13 December 1984

Counsel: K.N. Hampton for Appellant
B.M. Stanaway for Respondent

Judgment: 13 December 1984

ORAL JUDGMENT OF HOLLAND, J.

The appellant appeals against the sentence of four months' imprisonment imposed upon him on a charge of burglary. He appeared for sentence with a co-offender. Both he and his co-offender had bad records. His co-offender was sentenced to a period of eight months' periodic detention. It has not been submitted, and could not have been submitted, that a sentence of four months' imprisonment for burglary by this offender was either inappropriate or excessive. It is submitted, however, that it is completely disparate with the sentence imposed on the co-offender.

Parity of sentence between co-offenders is a very important factor in sentencing, but it must not be regarded as a strait jacket. The function of the sentencing Court is to decide what is the appropriate sentence for the offending. Having done

that, it will then inquire whether there are appropriate circumstances justifying that sentence being reduced because of the situation of the offender. The reducing factor will not apply equally to co-offenders.

Here the District Court Judge has faced up to the problem of parity of sentence and has given his reasons as to why he chose to impose different sentences. The co-offender had been out of prison for a period of some six months which, considering that it followed a term of imprisonment of four years, might in some ways be regarded as quite an achievement. The appellant had been out of prison a few days. The District Court Judge decided that because the co-offender had shown that he could live in the community without offending for a period he should take the step of not requiring him to serve a prison term which was the appropriate sentence for the offence. It is important that it be remembered that periodic detention is only a form of sentence that is to be applied when the Court has reached the view that gaol or imprisonment is the appropriate sentence for the offence.

This appellant was fortunate. The District Court Judge has concluded his remarks by stating that he has imposed a lesser sentence on the appellant in the hope that he would appreciate that parity of sentencing was an important factor. I am not sure that it was necessary for the District Court Judge to reduce the sentence imposed on this man on that account, and he could not have complained if the sentence of imprisonment that had been imposed upon him was substantially more, notwithstanding that his co-offender received a sentence of period detention. But the circumstances are certainly not of such gravity that would warrant

3.

my interfering with the sentence by increasing it. However I am satisfied that no grounds exist to reduce the sentence.

The appeal against sentence is dismissed.

CA D Howard J