

BETWEEN

DICKSON

Appellant

A N D

THE POLICE

Respondent

Hearing: 5 July 1984

Counsel: D.I. Jones for Appellant  
G.K. Panckhurst for Respondent

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ORAL JUDGMENT OF ROPER J.

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This is an appeal against sentence only on four charges of using a document fraudulently and two of converting money to the Appellant's own use. He was sentenced to eighteen months' imprisonment on each charge, the terms to be concurrent. It is accepted that the substance of the offending was that the Appellant, as a motor vehicle dealer, sold vehicles at less than their true value and failed to account for the proceeds to a finance company, presented sham hire purchase agreements to the same company for vehicles no longer in his possession, and failed to account to the owner of a car for the full price received for it. I have been informed that there were other dealings which were the subject of informations but which, in the result, the Crown accepted did not show criminal activity and those informations were withdrawn.

It was accepted by the sentencing Judge that the Appellant had made no personal gain from these transactions in the sense that the money had not been spent on high living but nevertheless he regarded him as having benefitted by using the money of others to keep his business afloat, a seemingly impossible task for the Appellant was bound to be found out.

An order for restitution was sought but not made for the sum of \$28,000, although the true loss, and this was uncertain, may be nearer to \$20,000 because of some family arrangement concerning one of the transactions.

The Appellant is 35 and has no previous convictions. His offending was described in these terms by the Probation Officer:-

"In summary, Dickson appears as a man who tried to become too successful too quickly. When the pressure of a failing business was on him he resorted to ill-considered remedies to try to resolve the situation. I consider that he has learned from his experiences and in the future will limit himself to areas where he is confident of his knowledge and expertise."

The Appellant's motor vehicle dealer's licence was suspended and on an appeal against that suspension the Appeal Board expressed the view that there was no evidence to suggest criminality on the Appellant's part but merely bad business management, which I fear I must regard as an extraordinarily charitable conclusion. The Appellant was co-operative with the police to the extent that he volunteered information about transactions concerning which there had been no complaint. That may be but that was after his extradition from Australia on these charges.

Mr Jones has referred to other decided cases where shorter terms of imprisonment have been imposed for what might be regarded as more serious offending, although in some of those cases restitution had been made which is a relevant consideration, and he referred to the observations of Lord Lane C.J. in R. v. Bibi reported at page 628 Volume 124 of The Solicitors' Journal where he said:-

"... sentencing courts had to be particularly careful to examine each case to ensure that, if an immediate custodial sentence was necessary, it

was as short as possible consistent only with the duty to protect public interests and punish and deter the criminal. ...Much depended on the circumstances of each individual offender and each individual offence. The court could and should ask itself whether there was any compelling reason why a short sentence should not be passed."

I think this was a case where the Appellant deserved more consideration for his past good record than the sentence of eighteen months allowed for. It was not suggested in this Court, although it apparently was in the lower Court, that a term of imprisonment in itself was inappropriate. The submission is that in all the circumstances a term of eighteen months' imprisonment was manifestly excessive.

Mr Panckhurst has very fairly conceded that the Appellant's actions were in all probability motivated simply by a desire to keep the business going.

I am satisfied that a sentence of eighteen months' imprisonment was manifestly excessive in all the circumstances and the appeal is allowed to the extent that the term is reduced to one of nine months' imprisonment.

A handwritten signature in cursive script, likely belonging to a judge or legal official, positioned to the right of the main text.

Solicitors:

Purnell, Creighton, McGowan & Co., Christchurch, for Appellant  
Crown Solicitor, Christchurch, for Respondent