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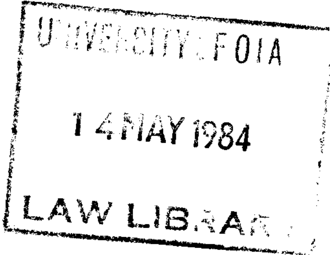
IN THE HIGH COURT OF NEW ZEALAND M NO 570/83

WELLINGTON REGISTRY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BETWEEN JOSEPH ANTHONY CARROLL

Appellant

AND POLICE

Respondent

Hearing: 8 February 1984

Counsel: Appellant Appeared In Person
JHC Larsen for Respondent

Judgment: 8 February 1984

ORAL JUDGMENT OF JEFFRIES J

Appellant had a search warrant executed by the police at his property where it was discovered he had in his possession a Sharp tape deck which was able to be established as having belonged to a man named Littleworth, who had had it stolen from his property in a burglary in March 1983. The search warrant was executed some 6 months later in September 1983. On being questioned defendant said he had bought it in a hotel some months previously for $5. He was charged with receiving stolen property and pleaded guilty. He did not have counsel representing him and has indeed not had it at any stage, and appears for himself in this court.

A probation officer's report was called for in the lower court. It appears that appellant has a record of criminal offending of a disorderly conduct

type although he was convicted of burglary in 1973, but nothing of a dishonest nature since then. He is now aged 25 years. Conveyed in the probation officer's report was a remark made by appellant that he would not do periodic detention if that sentence was imposed. With respect to the learned Judge in the lower court he took a sensible view of that remark and did not allow it to influence him in the sentence that he ultimately imposed upon appellant. The sentence in all the circumstances was 150 hours of community service. The maximum that can be imposed for community service is 200 hours. The punishment itself is indeed a lenient one if community service is imposed because as Mr Larsen has pointed out it is an alternative to imprisonment which might have been imposed in this case.

Mr Carroll comes before the court now on his own behalf and said that he is willing to serve the sentence of the court but submitted that in all the circumstances it was too long. He said that it equalled 4 weeks work for which he could earn $1,000. There is some support for his contention in the way he put it to the court, but that is a highly artificial method of looking at the sentence. It could be looked at in other ways which would be not so favourable to appellant.

After considering the submissions of Mr Carroll I have reached the view that perhaps the sentence of 150 hours, which is three quarters of the maximum, might in all the circumstances of this case be a little too long. I therefore allow the appeal, quash the order and substitute 100 hours of community service.

Solicitors for Respondent: Crown Solicitor, Wellington