

20/11
IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

✓ NLR
X
NAME SUPPRESSED

M 391/84

1419

BETWEEN

G

Appellant

A N D POLICE

Respondent

Offence: Stealing cask of wine
Dealt with: 3 September 1984 At: Hamilton BY: Green DCJ
Sentence: Fined \$30 and costs \$20

Appeal hearing: 7 November 1984
Judgment: 7 November 1984
Counsel: D.L.Bates for appellant
P.J.Morgan for respondent
Decision: Appeal allowed
Costs \$50

ORAL JUDGMENT OF BISSON J.

This appellant pleaded guilty to a charge that he did steal a one litre cask of wine valued at \$3.00 the property of Woolworths NZ Ltd. He was employed by a firm of cleaners who carried out the cleaning of Woolworths premises and while so employed removed a cask of wine from the premises thereby committing theft.

In imposing a fine of \$30 with court costs \$20 and refusing to exercise a discretion to discharge the appellant under s.42 of the Criminal Justice Act 1954,

the learned District Court Judge, in a memorandum he made after the event, said that, according to his recollection he took the view "that the dominating relevance was the breach of trust of the defendant in stealing from the premises he was employed to clean."

In considering a case such as this where the offender is a young man, in this case twenty years of age, a student with no previous convictions, the court must, as was stated by Richardson J. in Fisheries Inspector v Turner (1978) 2 NZLR p 233 at page 241:

"It must have due regard to the nature of the offence and to the gravity with which it is viewed by Parliament; to the seriousness of the particular offending; to the circumstances of the particular offender in terms of the effect on his career, his pocket, his reputation and any civil disabilities consequential on conviction; and to any other relevant circumstances. And if the direct and indirect consequences of a conviction are, in the Court's judgment, out of all proportion to the gravity of the offence, it is proper for a discharge to be given under s.42.

It appears to me in this case that, while the offence had the more serious aspect of being performed by a person who was in a position of trust, insufficient consideration was given to other aspects of the matter, in particular, the exceedingly small value of the stolen goods, the previous good record of the appellant, and his considerable contribution to community affairs. The good works of a person coming before the court for the first time must be put into the balance. In my view, that was not done in this case, and taking into account the future of this young man, it can be said that a

conviction would be out of all proportion to the gravity of the offence.

Accordingly, the appeal is allowed, and the appellant is discharged under s.42. His name is suppressed but, as a lesson to him if he needs any further lesson, he is ordered to pay costs of \$50.

Al. Brown J.

Solicitors

McLeod, Bassett, Buchan and Partners, of Hamilton, for appellant
Crown solicitor for respondent.