

LOW
PRIORITY

1886

BETWEEN

H

Appellant

AND

POLICE

Respondent

Hearing: 10 December 1986

Counsel: C.J. O'Neill for the Appellant
C.Q.M. Almao for the Respondent

Judgment: 10 December 1986

ORAL JUDGMENT OF DOOGUE J

This is an appeal against sentence.

The Appellant appeals against the sentence of Corrective Training imposed upon her on 11 November 1986 in respect of three separate offences for which she was convicted on 14 October 1986. The three offences consisted of:-

1. An assault on a young girl on a bus earlier in this year.
2. On 17 September 1986 the Appellant committed a burglary with an associate when alcohol and a stereo unit were taken from a rugby clubroom.
3. On 26 August 1986 the Appellant travelled in a motor vehicle knowing it was stolen.

The Appellant was born on 5 June 1970.

The onus is on the Appellant to satisfy the Court that the sentence imposed is manifestly excessive or wrong in principle or that there are exceptional circumstances calling for its revision. R v Radich, [1964] NZLR 86.

Mr O'Neill, for the Appellant, made three submissions which were primarily to the effect that the sentence was wrong in principle. The last of those submissions requires a consideration of Section 68 of the Criminal Justice Act 1985 which provides:-

"Where a person who is not less than 16 years of age and is under 20 years of age is convicted of an offence punishable by imprisonment for a term of 3 months or more and a Court is satisfied that, had the offender been of or over the age of 20 years, it would have sentenced the offender to imprisonment for a term of 3 months or more, the Court may sentence the offender to corrective training."

Mr O'Neill submitted that having regard to the circumstances of the offender, it is unlikely or improbable that the Court would have sentenced the Appellant to imprisonment if she had been over the age of 20 years.

Whilst the Appellant has previously appeared before the Courts, such appearances have been limited to two offences of theft in 1985 and 1986. In respect of each of those offences she was separately sentenced to supervision of six

months. The Pre-Sentence Report indicated that she had an excellent attitude to the employment which she had previously been in and a reference from that particular employer is before the Court confirming the Pre-Sentence Report. The Report also indicates that the Appellant has been quite responsible in support of her sick and ailing mother. There is certainly nothing involved with the particular offences or the circumstances of the Appellant which would necessarily have resulted in her receiving a sentence of imprisonment if she had been over the age of 20 years. Indeed, having regard to the requirements of Sections 6 and 7 of the Criminal Justice Act 1985, it is highly unlikely that imprisonment would have been considered as a suitable sentence when, to date, the only other sentences that the Appellant had received were of supervision, and there is no suggestion that the particular assault was a serious one requiring a term of imprisonment.

Mr Almaso, for the Crown, accepted that having regard to the provisions of Section 68 of the Criminal Justice Act 1985, it was not correct for me to endeavour to support the sentence of Corrective Training imposed by the District Court Judge.

I am in agreement with him that in this particular case such a sentence is wrong in principle and that the appeal must be upheld.

The issue arises of what is the appropriate sentence to impose in substitution. The Appellant has served some thirty days of the sentence of Corrective Training as she was not released on bail pending the hearing of her appeal.

Mr O'Neill, on behalf of the Appellant, invited me to consider a sentence of community care.

Mr Almas, on behalf of the Crown, suggested that I should consider a sentence of Periodic Detention. Having regard to the previous offending in respect of the two charges of theft, and having regard to the three offences in the present year with one of them the crime of burglary for which there is a maximum penalty of ten years, it does not appear to me appropriate that I should consider a sentence of community care.

I will quash the sentence imposed by the District Court Judge. In substitution therefore the Appellant is sentenced to three months periodic detention. She is ordered to report for the first time to the Periodic Detention Centre at Hill Street, Hamilton, at 6.00 pm on Friday 12 December. Thereafter she is to report on such occasions each week as the Warden specifies. Her attendance on any occasion is not to exceed nine hours.

Padraig J.

Solicitor for the Appellant:- C.J. O'Neill
Hamilton

Solicitors for the Respondent:- Crown Solicitor
Hamilton