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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

AP.106/86

**NOT
RECOMMENDED**

1631

BETWEEN WARREN JOHN HUNT

Appellant

AND POLICE

Respondent

Hearing: 22 October 1986

Counsel: N. Morley for the Appellant
 C.Q.M. Almao for the Respondent

ORAL JUDGMENT OF DOOGUE J

This is an appeal against sentence.

The appellant is sentenced to two years imprisonment on two charges of conversion in respect of offences on 23 and 28 September 1986. He was further sentenced to a period of one months imprisonment on a charge of driving whilst disqualified in respect of an offence on 28 May of this year. The sentences were concurrent.

Mr Morley, on behalf of the Appellant, has made three or four primary submissions as to why this Court should interfere with the decision of the District Court Judge.

The first is that the District Court Judge failed to take adequate notice of Section 6 of the Criminal Justice Act 1985 which provides for offenders against property not to be detained except in special circumstances. He acknowledges that the District Court Judge would doubtless be aware of that section and whilst the District Court Judge has not referred to it in his sentencing remarks, it would seem apparent that the reason for the departure by the District Court Judge from the content of that section related to the special circumstances relating to the offender, namely his very substantial list of previous convictions and sentences where at one time or another nearly every form of sentence has been tried.

The second submission by Mr Morley related to an error of fact which sprang from the pre-sentencing report and was touched upon by the District Court Judge in his sentencing remarks. That related to the period of time that the Appellant had been living with sponsors under a community care programme. The District Court Judge did refer to that in his sentencing but there could be no suggestion that it was a determinative factor in his sentence. In relation to the submission Mr Morley emphasised that in fact the Appellant's response to the community care programme had been good and this was indeed spelt out in the pre-sentencing report which was before the District Court Judge. He may have treated it with a degree of scepticism because of the error put before him in that report, but again, it is difficult to see that that was the determining feature of sentencing.

The third submission made by Mr Morley related to the sentence being disproportionate to that passed on to a co-offender who received a sentence of four months non residential periodic detention. However, that offender was a first offender and the question for this Court relates to whether the sentence of the Appellant was excessive or wrong, not the propriety or otherwise of the sentence on the co-offender.

Either as a related point or an independent point, Mr Morley urged upon me that the Appellant had not been the person who had initiated the series of offences, that that had been his co-offender. A letter was put before me from the co-offender. There is nothing in the District Court Judge's remarks sentencing indicating that he took the view that the Appellant had initiated the series of offences or was the person primarily responsible for them. It appears from his remarks, as submitted by Mr Almas in reply, that the District Court Judge primarily took into account the persistent offences of the Appellant.

The District Court Judge, in his remarks, made plain that, on the information before him, community-based sentences did not effect the attitude of the Appellant and he said:-

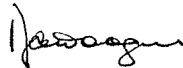
"...the community really requires that you be put aside for a sufficient time so that their property will be safe while you are."

It is thus clear from the District Court Judge's sentencing remarks that it was the record of the Appellant which weighed

heaviest with him. That record consists of a series of offences largely of dishonesty of one sort or another since 1980 in respect of which the Appellant has received various sentences, including sentences in 1983 of one years imprisonment, in 1984 of imprisonment of six months, in 1985 of further imprisonment of nine months after an earlier sentence of a lesser period of imprisonment.

In those circumstances I cannot say that the District Court Judge's decision was wrong in that the sentence imposed by him was too long, having regard to the circumstances of the Appellant or that he applied wrong principles or that there are exceptional circumstances calling for its revision.

The appeal is dismissed.



Solicitors for the Appellant:

Swarbrick Dixon & Co
Hamilton

Solicitors for the Respondent:

Almao McAllen & Kellaway
Hamilton