NOT
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
NELSON REGISTRY

M. 60/86

1903

BETWEEN: DARREN ROBERT DAVID JAMES

Appellant

A N D: THE POLICE

Respondent

Hearing: 12 December 1986 (In Wellington)

Counsel: F. Miller for Appellant
J.H.C. Larsen for Respondent

Judgment: 12 December 1986

ORAL JUDGMENT OF JEFFRIES J.

Appellant in this case faced sentence in the District Court at Nelson on 4 November 1986 in regard to three separate blocks of criminal offending which I will now set out.

On the night of 21 September last, appellant with three associates forced an entry into a helicopter hangar at Lower Moutere. It is true that the summary of facts placed before the lower court indicates that at the time of the breaking and entering appellant's exact role may not have been crucial but, undoubtedly, he was present. Of more importance is that the proceeds taken from a hangar, namely works tools, were used by appellant and later recovered from his possession. The

diminution of his involvement with the original breaking in was overtaken by his use of the proceeds. On the night of 23/24 September, some two days later, the same group of three were involved in a burglary of the H & H Foodlines store at King Edward Street, Motueka. The summary states that the defendant assisted in this burglary by forcing the door with an iron bar. Some point is made by appellant's counsel that he was not fully involved in that, but the inference the court takes is that the use of the word "assisted" does not lessen his criminal conduct. From that property goods of the value of $935 were taken and some of those goods had been recovered. There then followed, some four or five days later, on the night of 28 September, several offences involving tractors. The same three offenders as had been involved in the burglaries were concerned with these matters. It is not necessary to detail exactly the character of the offending but this can be said. First, the offending was wanton in the way damage was done to tractors amounting to several thousands of dollars which need not have been committed in the way the vehicles were used. The damage was wanton and mindless. Three different vehicles were involved over a period of many hours.

I turn now to the personal circumstances of appellant as outlined in the Probation Officer's report and submissions that have been made to the court this morning. Appellant is aged 21 years. He has a long list of previous offending and since 1983 alone he has been sentenced about five or six times to imprisonment. The most recent prison sentence was imposed in September 1986. but for sentence for crimes committed many months before. However, in February 1986 he was sentenced to one month's imprisonment for receiving stolen property, possessing cannabis leaf for supply, and two charges of common assault. Against the foregoing there is much that can be said in favour of appellant. He has, when out of prison at times over reasonably lengthy periods, tried to commit himself to a

better life. He has a defacto spouse and a child is expected. He has performed community service on occasions and has indicated steps, at least, towards maturity.

The aspect which is probably of most importance in this appeal, and stressed by counsel, is that of the three offenders, one Horn, about the same age and apparently with the same sort of list as appellant, was sentenced by a different judge the week before to 12 months' imprisonment. Mr Larsen has submitted to the court that a cardinal principle of sentencing is that like offences should receive the like punishment. That is not only a cardinal principle of sentencing but one that commends itself to the sense of justice in the community, namely that there ought to be equality of sentencing. There are clear times when that can be departed from and Rameka's case sets that out.

Many points have been made in a careful appraisal of the facts and the law as they apply to this particular appeal by appellant's counsel. Most of the good points I have already brought out, and the court is influenced by those until it reminds itself of its obligation in hearing appeals, that they may only be allowed if it appears to the court that a sentence imposed was either clearly excessive or inappropriate. After listening to counsel's submissions I have reviewed again the points which influenced the District Court judge in his approach to sentencing. In my view, he did not depart from principle, he did give consideration to the possibility of a different sentence from the senior co-offender of appellant, but in the circumstances decided that the facts did not allow it. It has been said by Mr Miller that he put too much weight on the sentence of the co-offender. That, of course, is a

different submission from the fact that he did not take it into account. The judge did take it into account, as is conceded, and he came to his conclusion that in all the circumstances of the case it was appropriate that appellant receive the same sentence as has been meeted out to Horn. All these matters, I consider, do not require the intervention of this court and, therefore, the appeal is dismissed.

Solicitors for Appellant: Fell & Harley, Nelson
Solicitors for Respondent: Crown Solicitor, Wellington