

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP.131/87

HEPI

Appellant

v

**NOT
RECOMMENDED**

POLICE

Respondent

Hearing: 24 July, 1987
Counsel: Appellant in Person
Mr. Cooke for Respondent
Judgment: 24 July, 1987

(ORAL) JUDGMENT OF BARKER J

This is an appeal against a sentence of 3 months periodic detention imposed on the appellant in the District Court at Henderson on 13 April, 1987.

The appellant pleaded guilty to one charge of theft of some jewellery, which was the property of the mother of his de-facto wife. His explanation was that he had had some money stolen from his wallet; he was taking the jewellery to compensate. He had no idea of the value of the jewellery that he stole. The jewellery has been restored to the complainant. According to the appellant today he has now made his peace with the complainant.

There is no record of why the District Court Judge imposed a sentence of periodic detention; there was no probation report called for; I just have no knowledge of why for this virtual first offender, an alternative other than periodic detention was not considered.

Mr Hepi appears himself today. Since the District Court hearing, he has obtained employment as a baker at Woolworths in Manurewa; he is settled in that job and apparently enjoys it. He is living with his de-facto wife; they have a child. Generally I think the community would be better served by keeping him in his employment, the hours of which include Saturday work. Periodic detention would interfere with his employment. This situation was not before the District Court Judge; at the time of sentencing the appellant was unemployed.

I have considered other alternatives, such as community service; the necessity for an adjournment would mean more time to be lost by the appellant. I think that for a virtual first offender (and I ignore convictions in the Children & Young Persons Court) the appropriate sentence is a fine.

I quash the periodic detention sentence and impose a fine of \$500. Under Section 83(1)(b) of the Summary Proceedings Act 1957 I direct that payment be made by instalments of \$20 per week; the first instalment to be made 28 days from today, i.e. 21 August, 1987.

3.

The appellant can count himself lucky and must realise the if he gets into trouble again he will not be treated leniently. At the age of 18, I think he is entitled to a chance. He shows signs of settling down and becoming a useful member of the community; I am prepared to give him that chance.

R. D. Barker

Solicitor: Crown Solicitor, Auckland, for respondent