IN THE HIGH COURT OF NEW ZEALAND
GISBORNE REGISTRY

AP 1/87

BETWEEN EASTON

Appellant

AND NEW ZEALAND POLICE

Respondent

Hearing: 19 February 1987

Counsel: Mr A.J. McDonald for Appellant
Mr M. Sullivan for Respondent

Judgment: 19 February 1987

(ORAL) JUDGMENT OF BARKER J

This is an appeal against sentence. The appellant pleaded guilty to an offence under S.15(2) of the Litter Act 1979: he was charged that, on 1 January 1987, without reasonable excuse, he deposited litter, namely, a beer bottle in a public place the litter being of such a nature as to be likely to cause injury to any person coming into contact with it. He was fined $450 plus Court costs. He was represented by the duty solicitor. There is no record of the sentencing remarks of the District Court Judge; Mr McDonald has been assigned on legal aid granted by the District Court.

S.15(2) of the Litter Act 1979 reads as follows:

> "(2) Where any person commits an offence against subsection (1) of this section, and the litter deposited is of such a nature as is likely to endanger any person or to cause physical injury or disease or infection to any person coming into contact with it (being in particular any bottle whether broken or not, glass, article containing glass, sharp or jagged material,

> or any substance of a toxic or poisonous nature) that person is liable -
> (a) In the case of an individual, to imprisonment for a term not exceeding 1 month, or to a fine not exceeding $750, or to both; or
> (b) In the case of a body corporate, to a fine not exceeding $5,000."

Mr McDonald accepts that an unbroken beer bottle can come within the purview of S.15(2) but that to litter a broken beer bottle or broken glass from a broken beer bottle would be a more serious offence than the deposit of an unbroken bottle.

The grave factor in this case is that the appellant was spoken to by the Police at the time, namely 6.15am on New Year's Day. He and his associate were warned not to drop bottles; they continued to do so. The appellant offered no explanations for his actions. The fact that he was told not to litter and continued to do it is an aggravating factor. I agree with Mr McDonald that this offence is not as serious as depositing broken glass from bottles.

The District Court Judge was told that the appellant was working as a shop hand, earning $164 net per week with overtime. However since then (and this was a matter obviously not before the District Court) the appellant has suffered a motor accident: he is on Accident Compensation: counsel has ascertained at once that he is unlikely to be re-employed once he comes off Accident Compensation. The appellant is aged 19 and lives in a flat where he pays a weekly rental of $40.

It is not possible to state what were the factors that weighed with the District Court Judge when imposing penalty because there is no record of his remarks when imposing sentence. This is understandable because this was a relatively minor charge in what was no doubt a long list of similar minor offences. I agree with what seems implicit in the penalty imposed: persons who deposit beer bottles and the

like need to be taught a lesson particularly in circumstances where the appellant had been told by the Police not to deposit.

However I think that the penalty should be reduced principally because of the information that is now available to me which was not available to the District Court Judge, namely the appellant is on Accident Compensation: he is likely to become unemployed.

Despite his lack of means the penalty should be substantial; I reduce the fine of $450 to $300. The appeal is allowed accordingly.

R. D. Barker J.

Solicitors: Chrisp & Chrisp, Gisborne for Appellant
Crown Solicitor, Gisborne for Respondent