

**NOT  
RECOMMENDED**

BETWEEN LALE JOHN FAAALIGA  
Appellant  
AND POLICE  
Respondent

Hearing: 16 December 1987  
Counsel: No Appearance for the Appellant  
C.Q.M. Almao for the Respondent  
Judgment: 16 December 1987

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ORAL JUDGMENT OF DOOGUE J

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This is an appeal against sentence.

The Appellant was sentenced on 1 September 1987 to 12 months imprisonment in respect of an offence committed on 27 June 1987 of unlawfully and without colour of right interfering with a vehicle valued at \$10,000.

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.

The Appellant is a serving prisoner.

The Appellant's grounds of appeal are:-

"For four years I have not interfered, in any way or form, with a vehicle. I feel that this should be taken into account. My past record of cars is nothing to be proud of I know and am regretting I ever stepped into crime. I am only asking for a chance to prove myself both to the system and society. I am very ashamed of my past and the constant memories of institutions. I have underlined past because, to me, thats what it is.

Thank you."

The District Court Judge in his sentencing remarks indicated that in convicting the Appellant for the offence for which he was sentencing him, he had not believed the lies which the District Court Judge had held that he told in respect of the offence. He accepted the submissions of the Appellant's counsel that the Appellant had had an unhappy childhood but he commented that the Appellant was now 25 years of age and old enough to take responsibility for himself and to start thinking about his obligations to other members of the community. He considered the financial position of the Appellant and noted that the Appellant had debts of nearly \$6,000 and virtually no assets. He considered community-based sentences but noted that as the Appellant had had six convictions for breach of periodic detention, he shared the Probation Officer's view in the

pre-sentence report that a community-based measure of that sort would be a waste of time. He noted that the Appellant had had 22 previous convictions relating to dishonesty over motor vehicles for which he had received a wide variety of sentences, none of which appear to have been effective in deterring the Appellant from offending. He noted that he had taken into account the relevant provisions of the Criminal Justice Act relating to property offences but in his view there were ample reasons why he should impose on this occasion a fully custodial sentence. He accordingly imposed the sentence of imprisonment referred to above.

The point raised in the Notice of Appeal as to the time when the Appellant last committed an offence of the same kind is of little relevance to the sentence to be imposed upon the Appellant by the District Court Judge, having regard to the continuity of his offending and the failure of the Appellant to respond to other forms of sentence.

The only issues which I have to consider are, I believe, the effects of Sections 6 and 7 of the Criminal Justice Act 1985 which were clearly in the mind of the District Court Judge at the time he sentenced the Appellant.

The issue under Section 6 is whether there were special circumstances of the offence or of the offender which

made any other sentence other than imprisonment clearly inadequate or inappropriate.

Having regard to the matters traversed by the District Court Judge in his sentencing remarks, I am satisfied that the District Court Judge has properly directed himself to those issues and that the circumstances upon which he relied were appropriate circumstances for imposing a sentence of imprisonment.

Under Section 7(2) of the same Act, the term of a prison sentence shall be as short as in the opinion of the Court is consonant with promoting the safety of the community.

Having regard to the Appellant's record and the periods of imprisonment imposed upon him upon earlier occasions, I cannot say that the sentence imposed by the District Court Judge upon this occasion was excessive or wrong in principle or that there are exceptional circumstances calling for its revision.

The appeal is dismissed.

*Herbert J.*

Solicitors for the Respondent: Crown Solicitor  
Hamilton