

**NOT
RECOMMENDED**

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP:88/88

BETWEEN: BRENDAN NEIL EDWARDS
Appellant

A N D: THE POLICE
Respondent

Hearing: 8 June 1988
Counsel: B! McDonnell for Appellant
 C! Mander for Respondent
Judgment: 8 June 1988

ORAL JUDGMENT OF JEFFRIES J!

Appellant in this case is aged 18 and a half years and appeared before the District Court at Upper Hutt on 26 April 1988 for sentence on 10 separate charges! In a period of about one month, commencing from beginning of January 1988, appellant committed a fairly large variety of offences involving five for theft, theft of a motor vehicle from employer, two thefts of motor vehicles, breach of periodic detention and non-payment of fines! Some of the acts of theft, particularly from vulnerable objects like motels and from his employer who entrusted him with property, had a particularly mean aspect! As Mr Mander has pointed out on behalf of the Crown which supports the sentences, which will be mentioned shortly, there was planning involved in the acts of dishonesty, they were deliberate and for the purpose of monetary gain! He has a history of alcohol abuse but there was no suggestion the offences were committed under that influence!

The learned Judge had before him a probation officer's report which set out some of the matters already referred to! One matter of significance is that in May 1987 appellant committed two burglaries for which he was fined! In the following month of June 1987 he committed two further burglaries and a theft, and on that occasion he was sentenced to six months' periodic detention! It is appropriate to mention here that prior to those offences he had some minor blemishes, but not of a very serious character such as the ones just mentioned! Of personal significance in his background is that he left school at 15 years of age to work for his father who very soon after died of cancer before appellant reached the age of 16! It was submitted this tragic event in his life destabilised him and may have been at least one of the principal causes for the subsequent persistent offending that followed in 1987 and 1988! His mother has been very supportive of him throughout these last couple of years, but has found him increasingly difficult to manage! The recommendation of the probation officer is worth reproducing in the last paragraph of quite a long and detailed report:

"Before the Court is an 18 year old youth who has previous offences for dishonesty! His mother is very supportive and she admits to having difficulty communicating with and controlling this son! Edwards has begun to respond to counselling and appears to obtain real benefit and support from the Crisis Group! However, it is noted that these offences occurred while he was on Supervision and the calculated nature of these offences is of concern to the writer! It is understood that Edwards is also to appear on a further charge of breach of Periodic Detention and non-payment of fines and reparation totalling \$4,018!40! Given these circumstances and taking into account the repetitive nature of the offences and the similarity to

those committed in 1987 it is acknowledged that community-based sentences do not appear to have acted as a deterrent for this offender and accordingly a custodial sentence is recommended at this juncture!"

It is not often in this court's experience that the recommendation of a probation officer is as down-right as that is in this instance! By way of further background that may have led the officer to that conclusion is to record here that the fine imposed in 1987 for the burglaries was not paid, the periodic detention imposed in June was not performed and a further term of periodic detention was ordered which he did not complete, although there may be some slight reason why that occurred! At all events he pleaded guilty and that was one of the charges for which he was sentenced to three months' imprisonment!

The learned District Court Judge in his sentencing remarks surveyed all the possibilities available and clearly felt with the history of this young offender that he was not likely to comply with any other reasonable sentence available to the court which could be characterised as non-custodial! He seemed to accept he had to face the imposition on appellant of a custodial sentence! Mr McDonnell in his submissions to the court argued that it was not necessary to impose such a sentence because the special circumstances of the offence, or the offender, did not make it clearly inadequate or inappropriate for there to be an alternative! Mr McDonnell submitted there was nothing special about the offending while being careful not to under-estimate the gravity! He said further the special circumstances of offender should work in his favour, not against him! He had to concede, of course, there was previous offending and a certain persistence in that

offending, but then against that was the youth of appellant, and Mr McDonnell, who has seen him within the last few days, was able to tell the court of his observations of immaturity in appellant!

Mr McDonnell argued in this court that if appellant, notwithstanding the directions of the Criminal Justice Act in regard to property offences, felt bound to impose a custodial sentence it ought to have been corrective training! Mr McDonnell conceded that with the lapse of some six weeks corrective training is not now a realistic option, but he used that argument to support a much shorter sentence than that imposed! One argument of Mr McDonnell's which the court felt was persuasive in this case is that the transition from non-custodial sentences to a full-time custodial sentence of a total of 12 months was too much! In fact the learned District Court Judge imposed varying sentences of imprisonment ranging from three months for breach of periodic detention to 12 months for theft of the motor vehicle! He disqualified appellant also from driving for 18 months from 26 April 1988! Every single charge had imposed a prison sentence, although the District Court Judge obviously had in mind that they would all be served concurrently!

In view of the background of the offender who had reached the age of about 16 or 17 years with a relatively free record, and from about May 1987 to the end of February 1988 committed a number of property offences, a sentence of 12 months in total is too much! On appeal one cannot re-make a sentence entirely because lapses of time prevent that, as I have already observed! I also detect in the probation officer's report there is a deep-seated vulnerability in this young man and the permanent cure for it may be to lessen the time he does spend in an adult prison!

I therefore allow the appeal to the extent that for each charge on which a sentence of imprisonment in excess of six months was imposed are all reduced to six months which, in effect, means that will be the sentence he is to serve!

A handwritten signature in cursive script, appearing to read "G. B. S. J.", is written in the center of the page.

Solicitor for the Crown:

Crown Solicitor, Wellington