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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP187/88

BETWEEN JOHNSON

Appellant

AND POLICE

Respondent

Hearing: 31 October 1988

Counsel: Jackson for Appellant
Leabourn for Respondent

Judgment: 31 October 1988

(ORAL) JUDGMENT OF THORP J

This is an appeal against a sentence of four months periodic detention, to which was attached an order to pay reparation of a sum of $223.25, imposed in the Henderson District Court on 8 August 1988 on two offences which arose out of the same set of circumstances, one being a false complaint under Section 24 Police Offences Act 1981, the other a false pretence under Section 246(2) Crimes Act 1961.

The nature of the offences was the inflation of a claim for insurance following burglary. It was plainly an intentional fraud, for a not insignificant sum. It was discovered when some of the property falsely recorded as having been stolen in the burglary was recovered in June of this year. Upon its discovery the appellant frankly admitted his part. He explained the cause as financial pressure arising from the failure of a business which had left him with substantial debts he was having difficulty repaying.

The appellant at the time of the conviction was 31 years of age. As a youth he got into trouble which resulted in a series of convictions between 1974 and 1976. These he grew out of, and the 1986 offending seems to have been foreign to his general way of life in later years.

With his confession of fault went and agreement to repay the insurance company concerned. They agreed on repayments at the rate of $200 per month, an arrangement which was adopted by the sentencing Court.

Mr Jackson appeared on sentencing, as he has on this appeal. At the hearing he naturally enough adopted the recommendation in the pre-sentence report that, since a substantial amount of the Appellant's income was earned in the weekends, the Court should impose punishment by way of a fine rather than periodic detention.

The pre-sentence report contained the paragraph:

> "Neither the friends with whom he boards nor First City Finance (his employer) know of his offending. Johnson hopes to keep it quiet."

Mr Jackson told me today, and I understand this was also a matter of advice to the District Court, that the appellant's employer had indicated it required a high standard of honesty of its employees, and that a conviction was likely to cost him his job.

The learned District Court Judge declined to accept Mr Jackson's plea or the Probation Officer's recommendation. He noted that the work Mr Johnson was doing required a high standard of honesty

and I have no doubt at all, reading his sentencing notes, that the reason for his imposing periodic detention instead of a fine was that he felt it would be wrong for the matter simply to be swept under the mat, so to speak, and for the employer to continue in the false belief that no conviction existed.

There is no general agreement on the appropriate reasons for imposing sentences or their relative importance. But there can be no doubt, in my view, that a Court is entitled to take into account the interests of the public and risk to the public, not only in the sense of risk of physical injury, but also risk of property loss by reason of dishonesty.

Repossession agents have, by reason of the rights to enter under the various contracts they are asked to enforce, much wider opportunities for dishonesty than the average citizen. It was no doubt for that reason that Mr Johnson's employers impressed upon him their determination to require a high standard of honesty.

Against that background I cannot believe it would be correct for me to say that the decision taken in the lower Court was wrong, that it was inappropriate, or that it was manifestly excessive.

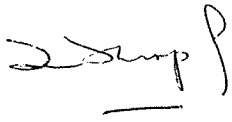
Further, I believe that Mr Johnson misunderstands the overall effect on himself of endeavouring to keep this matter hidden from those with whom he is conducting business. The reference handed to me from another Mt Maunganui firm indicates that he has managed to achieve a good reputation in his own community. It is not for this Court to seek to direct his employers about the attitude they should take to what happened in 1986, but plainly it would be better if the matter were dealt with by disclosure by Mr Johnson himself rather than by any other means.

I do not believe it would be appropriate to allow this appeal, as the only basis for doing so would be the view that the District Court was not entitled to take into account his situation and the need for special care in the employment of persons in that business; and that is not a view I hold.

Mr Leabourn mentioned that the increase in insurance fraud was affecting premium rates, and that it may be the Court imposed the sentence as a means of declaring the Courts' disapproval of such activity. That would have been a proper reason for fixing a significant penalty. It is not, however, as I read the notes on sentencing, the reason why in this instance a term of periodic detention was imposed.

The appeal will be dismissed, but the period for commencement of the periodic detention will be deferred until Friday week the 12th November when the appellant will be required to report to the Periodic Detention Centre at Tauranga.

I do urge Mr Johnson to take the responsibility himself of giving notice of this decision to his employer.



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