

4/12  
NZLR  
IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

AP.245/89

**NOT  
RECOMMENDED**

BETWEEN

RICHARD JOHN HOKO

Appellant

1940  
AND

P O L I C E

Respondent

Hearing: 13 November 1989

Counsel: Mr S. P. Singh for Appellant  
Mr M. E. Tedcastle for Respondent

Judgment: 13 November 1989

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ORAL JUDGEMENT OF WYLIE, J.

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The appellant appeals against a sentence of 10 months' imprisonment imposed on him in the District Court on 9 October 1989 on a charge of burglary. The appellant who was employed by a firm where his duties involved the handling of cash and the daily takings had possession of keys to the premises and in particular one which fitted the firm's alarm system. Taking advantage of his knowledge of the firm's premises and using the key for the alarm system he broke into the premises and stole some \$2,000 odd of which only part has been recovered.

The accused has a very long list of previous convictions going back to 1979. Many of them involve offences of burglary, theft and unlawful taking of motor vehicles. There

are also more serious convictions for aggravated robbery and sexual matters.

Counsel for the appellant submits that the sentence imposed was both excessive and inappropriate. He supports that submission by reference to a period of some eight to nine months immediately prior to this offence during which the appellant kept out of trouble following his release from prison on an aggravated robbery charge, formed a stable domestic relationship, obtained good employment which unfortunately he subsequently abused, and was able to apply in that employment the training and learning which he acquired during the course of extra mural studies carried out during his term of imprisonment. Counsel urges that the appellant showed in those eight or nine months a real determination to mend his ways and to lead a crime free life. His lapse on this occasion was, it was submitted, directly attributable to a domestic argument which developed and over-indulgence in alcohol on that occasion which hitherto he had avoided. Counsel has put his submissions in a persuasive manner and it may be that another Judge may have been swayed thereby to impose something less than a term of imprisonment and to have responded to those submissions by imposing a period of periodic detention coupled with reparation to which the appellant had agreed and again has expressed his willingness to accept today.

However, it is clear that in appeals such as this, this Court should interfere with the discretion of the sentencing Judge only where the sentence imposed is manifestly excessive or inappropriate. I am afraid that I cannot find the sentence imposed to be capable of classification in that way. Given the long list of previous convictions and the breach of trust, the offence in ordinary circumstances would have cried out for a term of imprisonment. It is clear that the burden of the submissions which counsel has made to me today was put to the District Court Judge and it is clear from his sentencing remarks that he took those submissions into account and weighed them up in the balance which he had to consider as to the appropriate sentence. It is also clear that he took into account the recommendation of the Probation Service which would have supported the submission now made by counsel. However, he also weighed up what he conceived to be the interests of society in the appropriate punishment for an offence of this kind given the appellant's past history and I am quite unable to say that the learned District Court Judge exercised the discretion given to him in any way wrongly or that the sentence which was imposed was excessive or inappropriate. Consequently, the sentence imposed must stand and the appeal must be dismissed.

However, I would add this, that I hope that the appellant is not discouraged thereby. He has shown in those eight to nine months his ability to overcome his past. His further lapse is regrettable, I am sure not only to himself, but to

others associated with him, and indeed to the greater community. It is clear that this man has abilities. He must by now have recognised what can be achieved by his application of those abilities in a proper and law abiding way. I would urge him not to give up because of this one lapse and that on his release from the prison term he again diligently apply himself to reformation. The rewards from doing so should not escape his attention. His future is dependent on his own efforts to continue what he achieved during that eight to nine months. He should not let the latest lapse prevent him from continuing to try to achieve a crime free life.

As I have indicated the appeal must, regrettably, be dismissed.



Solicitors: S. P. Singh, Otahuhu for Appellant  
Meredith Connell & Co., Auckland for Respondent