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NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M.86/89

BETWEEN: PAUL ALLAN HOLDEN

Appellant

A N D: THE POLICE

Respondent

Hearing: 19 April 1989

Counsel: P.H. Surridge for Appellant
Nicola Crutchley for Respondent

Judgment: 19 April 1989

ORAL JUDGMENT OF JEFFRIES J.

Appellant in this case faced sentence in the District Court on 14 March 1989 for two charges, being possession of 14 grams of cannabis and on a charge of receiving a leather jacket valued at $670. At 1.20 p.m. on Wednesday 14 December 1988 a search warrant was executed at appellant's address. During the search a plastic bag containing 14 grams of cannabis was located in the lining of a leather waistcoat hanging in appellant's bedroom wardrobe. Although Mr Surridge had not had the opportunity to examine closely the summary of facts I think he would admit that locating cannabis in the lining of the waistcoat is different from in a pocket of a waistcoat. There certainly was on those facts an attempt to hide the cannabis.

More importantly, only a few hours prior to the search at his address there had been a burglary committed at Cliff Pepperalls Limited, business premises at Upper Hutt, in which 11 leather jackets to a total of $6,765 had been stolen. Two of the jackets had an identifying brand name of "Marcol" and one of them was found in appellant's bedroom hardly more than 12 hours after the burglary. That jacket is valued at $670. When asked by the Police the explanation given by appellant was that he had purchased it from a friend three months earlier for $320, notwithstanding it was in an absolutely brand new condition.

When he came before the learned sentencing Judge on 14 March there was not available the usual probation officer's report. However, what was available to the sentencing Judge was a disgracefully long list of previous criminal offending. As I have had occasion to comment before, appellant at the age of almost 40 years has spent a life-time alternating between crime and punishment. Mr Surridge informed the court that he has spent a total of 17 years in jail. It seems from the record that he commits offences, is sentenced to imprisonment, serves it, leaves the prison and most often throughout his life re-offends and back he goes to prison. There was a period in the early 1980's when he seemed to bring his life under some sort of control, but that has been abandoned in recent years and he has regularly offended, including this year for a cannabis charge and receiving for which he was sentenced on 14 March 1989. The last offence prior to this was September 1988 for possession of cannabis plant, but he had an offence of receiving in August 1988.

Mr Surridge has stressed to the court that this man has become institutionalised and that imprisonment does not present any novelty and, because of his familiarity with it, any serious punishment. That may be so and the deterrent effect of

prison is thereby reduced. There is another issue and that is protection of the public. At least whilst he is in prison he is not offending, and another point made by Mr Surridge is that he has a cannabis problem described as indulgence in soft drugs and, of course, he has many previous offences. All these issues are for the appellant himself to make a decision upon and he cannot come to the court and, in effect, say I am institutionalised and I am not really being punished. As I have said previously, protection of the public may be the overriding feature in such a sentence. In my view it is not manifestly excessive and the appeal is dismissed.

Solicitor for Respondent: Crown Solicitor, Wellington