NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP.253/88

BETWEEN: JAMIESON

Appellant

A N D: THE POLICE

Respondent

Hearing: 22 February 1989

Counsel: Miss A. Aikman for Appellant
C. Mander for Respondent

Judgment: 22 February 1989

ORAL JUDGMENT OF JEFFRIES J.

Appellant in this case came before the District Court at Upper Hutt for sentence on two charges of burglary on 8 November 1988. I pause here to mention the file reveals considerable delay after the pleas of guilty to sentence, which is regrettable but apparently arose over difficulties within the District probation office.

There were two charges of burglary but the facts were distinctly different. In the first burglary on 4 July 1988 appellant and friends were at an address in Upper Hutt consuming liquor, and because of the pressures exerted by members on accommodation and bedding it was decided to visit premises known as the "Kiwi Ranch" in Kaitoke, Upper Hutt, which apparently is a collection of cabins, to get further

bedding. Appellant owned the vehicle available for travel, lent it, but did not drive it. At the scene of the burglary where blankets were taken, and other bedding, he remained in the vehicle. He therefore is criminally liable as a party and, no doubt, it was on that basis he pleaded guilty. An aspect of this particular burglary which is advanced properly by Miss Aikman in mitigation is that he voluntarily went to the Police Station in Upper Hutt on 9 August and admitted his involvement, apparently because another innocent person was being accused and he wanted him relieved of any responsibility. That is clearly indicative of a responsible attitude.

Prior to that call at the Police Station to admit the first burglary on 20 July 1988 appellant, in conjunction with two others, discussed and planned a burglary on a construction site in Wellington. This clearly is the more serious of the two offences for which he was to be sentenced on the day mentioned. Again appellant's vehicle was used and he drove it on this occasion to the construction site in Taranaki Street, Wellington. It has been stated by Miss Aikman that his knowledge that a crime was to be completed by way of burglary was at least delayed because he was requested to take one or other of the associates to the site to collect his own tools. I say criminal knowledge was delayed for it is not disputed now that by the time the site was reached he understood it was a criminal venture. A fair amount of determination was required to break into the building and to go to the fourth floor where a great variety of tools, amounting to almost $12,000, was stolen. It seems even on the summary of facts that appellant's involvement was not as full and complete as his two confederates. Nevertheless, he is equally liable. All the tools have been recovered and there is no question of reparation.

When he appeared for sentence before the learned Judge many personal factors could be placed before the court in mitigation of appellant's involvement within a period of about two weeks in serious criminal activity. He is now aged 19 years and will be 20 on 15 May 1989. He comes from a home that was broken whilst he was still a primary school child. He was brought up by his father with whom he has had some difficulty in communicating, and he had some difficulties in relating well to his mother. Despite that disturbed domestic situation which occurred early in his life he performed very well at secondary school where he gained his School Certificate and University Entrance. He is described by the Probation Officer as having above-average intelligence and considerable potential. His noted ability is exhibited by the fact that he has been in constant employment since leaving school and has never encountered difficulty in getting work. Most importantly, in that difficult late-adolescent period he never offended in any way whatsoever, and appeared in November 1988 as a first offender. The learned Judge at the time seemed to place considerable weight upon the fact of appellant supplying the vehicle. That certainly is a consideration for the sentencing court, but not the primary one. The primary consideration in sentencing, in circumstances such as are disclosed by this case, are the personal factors of the offender and the circumstances of the crimes. They clearly are crimes against property and no violence against anybody was involved. That, of course, puts them in a category whereby the courts are obliged statutorily not to impose custodial sentences. The learned District Court Judge imposed, for the offences mentioned, a sentence of three months' periodic detention for the first offence involving the bedding, and five months' periodic detention involving the burglary and theft from the building site. In my view there is a greater disparity in criminal liability between the two offences than is evidenced by the respective sentences of periodic detention. The really

serious offence was that involving the construction site; both in regard to the criminal involvement of appellant and also as measured by the value of the goods taken. In addition to the sentences of periodic detention the learned Judge imposed a disqualification from driving of six months and supervision for one year. It is to be noted that the sentence recommended in the Probation Officer's report was supervision and reparation for the first burglary.

Miss Aikman on behalf of appellant informed the court that there has been an informal arrangement not to serve the sentences of periodic detention pending this appeal and for him not to go under supervision. No doubt because they were informal arrangements he has, nevertheless, accepted his obligation not to drive his vehicle, and he has honoured that since the date of imposition of the sentence.

In my view this appeal against sentence is properly brought and that the sentences of periodic detention, in the circumstances outlined above, are excessive. The most important issue in this particular case in sentencing revolves around the personal circumstances and background of appellant. He is a person of high intelligence and every other area of his life, other than these two crimes, appears to be in order. It is specifically mentioned in the Probation Officer's report that he has no excessive involvement in alcohol and, apparently, none in drugs, which regrettably the court so often faces. He is interested in sport, appears to have a likeable personality, gets on well with people and is trusted by employers and others alike. There are two very good references placed before the court: one from the Reverend Norman W. Knipe, a Presbyterian Minister at Trentham, who speaks in glowing terms of appellant. There is also a reference from his present supervisor of his employment, which again describes appellant as capable and reliable, and there is a prospect of

him making further advancement in an international oil company. Miss Aikman has informed the court that if he is to serve his sentence of periodic detention he would be unable to take further education within his employment as proposed by his employer.

For the reasons outlined in the above paragraph I have reached the conclusion that the two sentences of periodic detention should be quashed, and they are. In their place I impose a sentence of one year's supervision (which is affirming the sentence imposed in the lower court), plus 20 hours' community service. Miss Aikman said despite there not being a report in this regard her client was able to serve such a sentence. I also allow the appeal in regard to the six months' disqualification and reduce that to four months, and consider it was proper to impose some disqualification in view of all the circumstances.

To the extent mentioned above the appeals are allowed.

Solicitors for Appellant: Richardson & McCardle, Upper Hutt
Solicitor for Respondent: Crown Solicitor, Wellington