

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

A.P. No.180/90

BETWEEN

FISHER

Appellant

A N D

POLICE

Respondent

Hearing: 6 August 1990

Counsel: A.J. Davis for Appellant  
M.N. Zarifeh for Respondent

Judgment: 6 August 1990

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ORAL JUDGMENT OF TIPPING, J.

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This is an appeal by Fisher primarily against a sentence of two years imprisonment imposed on a charge of burglary in the District Court. The Appellant also faced fraud charges and various miscellaneous charges in respect of which he received one months imprisonment and three months imprisonment respectively, all to be concurrent. The effective practical sentence was therefore two years imprisonment on everything.

Mr Davis in support of the appeal against the burglary sentence of two years has referred me to the fact that a co-accused called Holden received nine months imprisonment for the same burglary. Holden also faced other matters at the same time but not to such an extent as Fisher. Fisher's fraud charges represented some

\$850.00 and thus although there were a number of them their total gravity must be seen in that light. There does on the face of it appear to be a substantial disparity between the sentence of nine months received by Holden and the two years received by the present Appellant Fisher.

Mr Zarifeh for the Crown has accepted that the learned Judge made no reference to the sentence imposed on Holden at the time he imposed sentence on Fisher. Mr Davis has told me that after conferring with counsel who appeared for Fisher below, it appears that the learned Judge was not aware of what Holden received for his part in the same burglary. Whether the learned Judge was aware or not it seems to me, with respect, that the disparity here is too great. Mr Zarifeh is right when he points out that there were circumstances which justified a significant degree of disparity but not in my judgment to this extent.

These matters relate not so much to the participation in the burglary, which can be regarded as approximately equal, but rather to the fact that the present Appellant has four previous offences for burglary, whereas the man Holden had no previous burglaries and also in other respects the records which I have perused show that Fisher has a somewhat worse record than Holden. Also Fisher was facing in the round a greater number of offences and of greater seriousness than was Holden.

I have borne all those factors in mind but it seems to me that if the learned Judge below had had the totality of each before him he could not and should not

have distinguished to the extent of nine months as against two years. In my judgment an appropriate sentence for Fisher, bearing in mind the sentence on Holden but bearing in mind the disparity in the records and other matters mentioned, was a sentence no greater than twice that received by Holden. Therefore this appeal is allowed to the effect that the sentence of two years is varied to one of eighteen months.

A handwritten signature in black ink, appearing to read "A. C. [unclear]", with a long horizontal stroke extending to the right.