IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

A.P. No.27/91

BETWEEN CLAYTON JOHN HOWIE

Appellant

485

A N D POLICE

Respondent

Hearing: 1 March 1991

Counsel: A.N.D. Garrett for Appellant
R.E. Neave for Respondent

Judgment: 1 March 1991

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ORAL JUDGMENT OF TIPPING, J.

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This is an appeal against an effective sentence of fourteen months imprisonment imposed by the learned Judge below on Clayton John Howie on charges of burglary, breach of parole and theft. The burglary charge attracted twelve months, the breach of parole two months cumulative and the theft three months concurrent. The burglary was of a shoe shop. It was not a particularly serious case of its kind. By saying that I do not wish for one moment to minimise the seriousness of burglary itself. It is an offence which is deliberately outside the purview of s.6 of the Criminal Justice Act attracting as it does a maximum sentence of ten years imprisonment.

Mr Garrett pointed out to me that the learned Judge below had refused a further remand for a

community care assessment. The proposal was that the Appellant might be assessed for the Salvation Army's bridge programme. The learned Judge, although his reasons for refusing that request are not before me, was no doubt influenced by the fact that this Appellant has demonstrated himself over the last year or two quite unwilling to comply with Court orders. There are charges of breach of bail, driving while disqualified and even an escaping from lawful custody in his record. I am therefore driven to agree with the Crown's submission that the likelihood of this Appellant complying with a sentence such as community care cannot have been regarded as high.

I am quite unable in all the circumstances to come to the view that imprisonment was inappropriate. This Appellant had been imprisoned for eleven months earlier last year and he cannot have been released for very long from that sentence when this burglary was committed. Indeed, as has been pointed out, he was on parole from that sentence when the burglary in question was committed.

The unhappy fact is that people who are going to continue to commit burglaries, particularly so soon after the expiry of an earlier sentence for burglary, can hardly expect a great deal of leniency from the Court. There may on occasions be room for a creative sentence to try and get burglars off the wheel of burglary. This however was not in my view such an occasion in view of the Appellant's obvious refusal to co-operate with the Courts in the past. The learned Judge was entitled to take the

view that there was little chance of co-operation on this occasion and thus in my opinion he was driven to a sentence of imprisonment in all the circumstances of this case.

The question of the length of the term overall is perhaps a little bit more difficult. I agree with Mr Neave's assessment that this sentence of fourteen months overall was a stern sentence. The question is whether or not in all the circumstances I can find it to have been manifestly excessive. I have hesitated on the point but in the end I am not able to say, against the fact that this burglary was committed on parole so soon after the previous sentence had expired, and was coupled with a breach of parole charge and another theft, that fourteen months in totality was too long. The appeal is dismissed.