

NZCR

26/7

**NOT
RECOMMENDED**

BETWEEN

JORDAN MAIA BAKER

Appellant

1323

AND

POLICE

Respondent

Hearing: 15 July 1991

Counsel: J.A. Shorter for Appellant
C.Q.M. Almao for Respondent

Judgment: 15 July 1991

JUDGMENT OF DOOGUE J

This is an appeal against sentence. The appellant was sentenced to four months' imprisonment on 28 May 1991 following an application for review of sentences imposed on 19 December 1990 of 200 hours community service and reparation totalling \$700 in respect of one charge of burglary and seven charges of intentional damage. Such offending was first offending.

On 28 May 1991 the District Court Judge understood the appellant to be serving a sentence of six months' imprisonment under a warrant relating to the non-payment of fines. That misunderstanding flowed from information given to him by the duty solicitor representing the appellant. No doubt that information was given in good faith, but it led to a result which was undoubtedly wrong. It appears that any warrant issued for the non-payment of fines related to the non-payment

of the reparation relating to the offences already mentioned and a further fine of \$290 imposed for some act of disorderly behaviour. The information before this Court indicates that the fines of \$290 have been remitted and that the committal warrant in respect of the reparation has been cancelled. It is clear that if the District Court Judge had been informed of the full position at the time of sentencing the prison sentence would not have been imposed.

The probation service had recommended a sentence of periodic detention. Having regard to the original offending that would obviously have been an appropriate sentence given the overall offending for which the appellant was to be sentenced and the absence of any previous convictions.

It is clear that the sentence imposed was only imposed because of the District Court Judge's belief that the appellant was already serving a sentence of six month's imprisonment. The appellant has now served some six weeks, or thereabouts, of his sentence of imprisonment. As counsel both agree, I am left with the alternative of either referring the matter back to the District Court for reconsideration or quashing the sentence of imprisonment imposed and substituting a short term of periodic detention. It seems preferable from the point of view of the appellant, and generally, that I adopt the latter course and impose a short term of periodic detention in substitution for the period of community service previously ordered.

I accordingly allow the appeal, quash the sentence of imprisonment imposed upon the appellant and order in substitution that he be sentenced to two months' periodic detention and that he report for the first time to the Periodic Detention Centre at 10 Myrtle Street, Hamilton, at 6.00pm on Friday 19 July 1991 and thereafter he is to report on such occasions each week as the warden specifies. His attendance on any occasion is not to exceed nine hours. He is to be held in custody until the periodic detention order has been served upon him.

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Solicitors for the Appellant: Camerom Hinton & Co, Hamilton
Solicitors for the Respondent: Crown Solicitor, Hamilton