

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

5/7

AP. 21/91

**NOT
RECOMMENDED**

BETWEEN

JANICE KAYLEEN GIBBS

APPELLANT

1172

AND

THE POLICE

RESPONDENT

Hearing &
Judgment

14 June 1991

Counsel

A.M.C. Blair for Appellant
D.J. McDonald for Crown

ORAL JUDGMENT OF PENLINGTON J.

This is an appeal against a sentence of 3 months imprisonment imposed in the District Court at Tauranga on 6 June 1991. The appellant faced five charges which were preferred under s.229A of the Crimes Act. The first charge read:

"Janice Kayleen Gibb on or about 12th day of December 1990 used a document namely a National Bank cheque issued on the account of W & CP Tuhiwai for the sum of \$780 capable of being used to obtain a pecuniary advantage for the purpose of obtaining for herself a pecuniary advantage."

The four other charges were in similar terms. The total amount obtained was \$4640 of which the appellant received \$1546.65. To these five charges the appellant pleaded guilty.

When the appellant appeared for sentence a Tracey Michelle Johnson also appeared for sentence on five charges arising out of the same matter. That defendant appealed against sentence. I heard that appeal on 12 June 1991. I allowed the appeal for the reasons given in my oral judgment on that date. The background to the charges is set out in that judgment.

Today when this appeal was called Mr McDonald for the Crown indicated that no distinction could be drawn between the case of Tracey Michelle Johnson and the present appellant. Notwithstanding the fact that this appellant has some previous convictions I am disposed to treat this appeal in the same way and for the same reasons as I approached and dealt with the Johnson appeal.

This appellant played only a minor part. She pleaded guilty. She received only one-third of the monies obtained by the use of the unlawful cheques. She is 24 years of age. She has two children. She proposes to take her children to live with her mother in the Manurewa area. She is willing to make reparation.

I am disposed to hold that the sentence of 3 months imprisonment was manifestly excessive. Justice dictates that this appellant be treated in the same way as Tracey Michelle Johnson.

Accordingly, the appeal is allowed. The sentence of 3 months imprisonment is quashed. In lieu thereof I sentence the appellant to 4 months periodic detention.

The appellant is ordered to report for the first time to the Manurewa periodic detention centre at 8 Holmes Road, Manurewa on Friday 21 June 1991 at 6 pm. Thereafter she is to report on such occasions each week as the warden specifies. Her attendance on any occasion is not to exceed 9 hours. Further, I order that she make reparation in the sum of \$1546.65. She is ordered to pay that sum in instalments of \$20 per week, the first payment to be made one week from the date of this judgment.



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P.G.S. PENLINGTON J.