IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP.5/91
AP.6/91

BETWEEN S and E

Appellants

AND POLICE

Respondent

Hearing: 4 March 1991

Counsel: P.E. Dacre for appellants
Miss Y. Yelavich for respondent

Judgment: 4 March 1991

(ORAL) JUDGMENT OF BARKER J

These two appeals are being heard together. Each appellant appeals against a sentence of corrective training imposed on him in the District Court at Auckland on 13 December 1990. Each appellant had pleaded guilty to one charge of theft as a servant.

Both were employed as clerks in the District Court at Auckland. They stole 3 bags of cannabis from the exhibit room in the District Court which were there awaiting use at a jury trial. The cannabis was said to be worth $7,500.

The appellant E approached the appellant S and asked if he would like some of the cannabis. It seems that both gave the cannabis to others; there is no suggestion of using the cannabis for commercial gain.

S is aged 17; E i 19. Both had had limited experience in the District Court; there is a reference from the Registrar of that Court which says that both were reasonably diligent officers.

The District Court Judge on sentencing was satisfied that there was no commercial taint. He noted that each was a young man with a potential for good and for being a valued and contributive member of the community. Both of them were then (and are now) supported by concerned and caring families who must feel a great sense of having been let down by these two young men. The appellant E is also involved in church and community activities. It was suggested by the probation officer's report that S is susceptible to peer pressure.

Since the sentencing, E has gone back to school and is studying for 7th form bursary. S has been accepted by the New Zealand Employment Service for a computer course to start in May.

The learned District Court Judge considered, quite rightly, that there were two serious aspects to this offending and he considered he was justified him applying

S.6 of the Criminal Justice Act 1985 in imposing a sentence other than a community-based sentence. First the breach of trust implicit in any charge of theft as a servant. The Judge stated that it was easy to benefit from the trust that an employer places in the employee. The second is that, whilst this was not an attempt to pervert the course of justice, the public is entitled to rely on the absolute integrity of those who operate the Court system; if that lack of faith exists through the actions of some Court staff, then in the District Court Judge's words 'anarchy is as a natural consequence'.

Mr Dacre has made enquiries which show that there was no interference with the course of the trial in which this cannabis was an exhibit. The existence of the cannabis was apparently accepted and a certificate from the DSIR was apparently accepted. So there was no jeopardising of any particular case.

The probation officer suggested community service. The District Court Judge did not consider this appropriate in view of the seriousness of the offending. He did not think that 200 hours of community service was anything near sufficient repayment to the community.

I agree with the District Court Judge that this was serious offending and that it must be marked with considerable displeasure by the Court. But I do think that a sentence of imprisonment for these two young men

who have so much promise, who come from supportive backgrounds and who are in my view unlikely to reoffend was altogether too harsh. They were, I think, naive, ignorant and stupid.

If this offending had been by an experienced Court officer, one might have had to consider imprisonment but to send these two young men to a form of imprisonment, such as corrective training, would be to punish them too severely and possibly put them on the downward slope at an early age. Both have lost their jobs; both will have difficulty in being employed by the Government again. They will have difficulty being employed at all again with a conviction of theft as a servant.

I consider that they have both learned their lesson. A sentence of periodic detention, which I think is the appropriate sentence, is one which will be a fairly constant reminder to them for some time to come of the foolishness of their actions.

Accordingly, in each case, the sentence of corrective training is quashed. In its place, I substitute a sentence of 5 months' periodic detention. Each is to appear at such times as the notice to be served on them shall direct or as the Warden shall direct. The appellant S is to appear at the Periodic Detention Centre Henderson at 6.p.m. on Friday 8 March 1991. The appellant El is to appear at the Periodic Detention

Centre Otahuhu on Friday 8 March 1991 at 6.p.m.

In each case, I certify for the maximum time for any periodic detention to be 9 hours.

I hope that the Court system will never see these two young men again. They must realise the shame that they have brought to their families. One hopes, that after this initial lapse, they will become useful citizens.

R. D Barker J.

Solicitors: Crown Solicitor, Auckland, for respondent