NZLR

LOW PRIORITY

IN THE HIGH COURT OF NEW ZEALAND 18/12
AUCKLAND REGISTRY

AP.300/92

2468

BETWEEN ALLEN BRETT JAMES

Appellant

AND POLICE

Respondent

Hearing: 27 November 1992

Counsel: C. La Hatte for Appellant
V. Shaw for Respondent

Judgment: 27 November 1992

ORAL JUDGMENT OF BLANCHARD, J.

This is an appeal by Mr James against sentences imposed on charges of burglary and threatening to kill, the latter being under s.306(a) of the Crimes Act 1961.

The circumstances were that in company with some other people Mr James was involved in a relatively minor break in at a liquor store in West Auckland. He appeared before the Court on that charge and a charge of cultivation of cannabis plants. The learned District Court Judge gave an indication at the time of sentencing that if the matter had been confined to those things it is likely that a non-custodial sentence would have been thought appropriate.

However, on the same day as he pleaded guilty to those charges Mr James was foolish enough, and it appears somewhat under the influence of drink, to become involved in an altercation with the very people who had alerted the police to the burglary. In the course of that altercation, which took place outside the home of these people, serious threats were made to them. It appears that these threats were made by several people in the group, but certainly he has admitted making threats to kill in respect of both complainants.

The Victim Impact Reports indicate that the complainants were terrified and feared for their lives. They described the threats as being vicious and this occurred on more than one occasion because there was a second visit when the victims say that the threats got more violent.

Threats of this kind made to people who have assisted the police are viewed extremely seriously by the Courts. They constitute an interference with the processes of justice and usually people who do this kind of thing can expect a jail sentence, and a reasonably long one.

My first inclination, therefore, when this matter was called this morning was simply to dismiss the appeal with the result that Mr James would go to jail for six months. However, I have been persuaded by Mr La Hatte to think again. In particular he has told me some things which were not known to the learned District Court Judge, having not appeared in the pre-sentence report.

Mr James has custody of his seven year old son. The mother, formerly his partner with whom he was living at the time, was killed in a motor vehicle accident about three years ago and consequently the son is

the sole responsibility of Mr James. I have seen a reference on Mr James from the Woodlands Park Primary School which the son attends. It indicates that last year when his son was first enrolled he was in a distressed state, but has since settled down. The reference speaks of Mr James' activities in relation to the school and is written in positive terms.

If Mr James has to go to prison there will be difficulties in caring for the child who will probably have to live with a grandparent. There will also be the possibility of the loss of present accommodation, though I lay no stress on that factor.

It also appears that the District Court Judge was under the impression that Mr James was either unable or unwilling to attend a periodic detention centre on any regular basis because he lives at Laingholm and is a disqualified driver and there are difficulties of transportation to the nearest centre at New Lynn at weekends. It also may have been in the learned District Court Judge's mind that Mr James' previous performance in relation to periodic detention to which he was sentenced for driving while disqualified was unsatisfactory. However, that is incorrect. I have seen a termination report from the warden which indicates that his response to that sentence was acceptable.

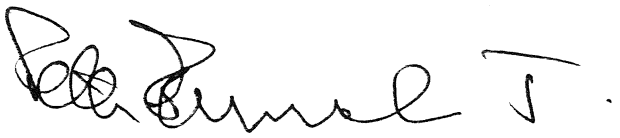
It now also appears that it would be possible for Mr James to do periodic detention on Thursday of each week at New Lynn. He is a contract painter and handyman and thus has the ability to attend on a weekday.

Taking into account all these circumstances, of which the District Court was not aware, and accepting at face value Mr James' statements made through his counsel and in person here today, that he recognises how

stupid he has been and the serious trouble that this has got him into and that he also recognises that he has got to do something about his drinking problem and the consequences that flow from that, I have decided that it is appropriate that the convictions on the burglary and threatening to kill charges be set aside and replaced in each case by a term of periodic detention for 12 months.

Mr James is directed to report to the periodic detention centre at New Lynn at 6.00 p.m. today, 27 November 1992, and thereafter to report as directed by the warden. The period of detention is to be of no greater duration than nine hours at any one time.

The appeal is accordingly allowed.



Solicitors: C. La Hatte, Epsom, for Appellant
Crown Solicitor, Auckland for Respondent