

NOT
RECOMMENDED

NZLR

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

30/7

AP.121/93

1203

BETWEEN

SHANE DAVID BAKER

Appellant

AND

P O L I C E

Respondent

Hearing: 16 July 1993

Counsel: L. L. Heah for Appellant
G. A. Rush for Respondent

Judgment: 16 July 1993

ORAL JUDGMENT OF BLANCHARD, J.

Mr Baker is a 19 year old man who pleaded guilty in the District Court to a charge of burglary and was sentenced to one year's imprisonment. He appeals that sentence.

His prior record does not make happy reading. It is, for his age, quite lengthy and it includes six convictions for burglary and one of entering with intent as well as convictions for theft. The pre-sentence report before the learned District Court Judge was not at all encouraging. It indicated that Mr Baker had made a poor response to a sentence of corrective training and that his attitude to a sentence of supervision imposed in September 1992 also lacked any commitment. He was at the time that report was prepared serving a sentence of periodic detention and the report indicated that his

performance had left an unfavourable impression on the warden of the centre. There had at that time been a breach of periodic detention. In the assessment the probation officer said that Mr Baker was, despite many protestations to the contrary when under pressure, unmotivated to change his behaviour and had merely been "going through the motions" since his release on supervision in 1992. It was also acknowledged that it was unrealistic to pursue the matter of reparation. So no positive recommendation was made.

In sentencing Mr Baker the learned District Court Judge was clearly sceptical about whether Mr Baker had any commitment to break the pattern of his behaviour. He referred to the previous record and he also dealt, of course, with the circumstances of the particular offence. The burglary was committed in Christchurch, together with some associates, in March of this year. One of the associates was returning to her home where she had been living. It seems that it was the home of her parents. Mr Baker went with her to the property and the District Court Judge noted that he had been drinking most of the day and the group of them removed property valued at a little under \$5,000. Some of the property was subsequently recovered but part of it had been disposed of and the outstanding amount was about \$2,600.

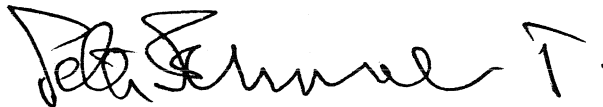
The learned District Court Judge described the appellant as a persistent burglar who had learned nothing from his previous experience of coming before the Court on such charges. He had been leading a nomadic lifestyle, was unemployed and had been described as having an "anti authoritarian attitude". On the basis of this unpromising material the Judge regarded the sentence of imprisonment as inevitable and imposed a sentence of 12 months' imprisonment.

Given the material before the learned District Court Judge I think he was entirely correct in his assessment and in the sentence handed down. However, the matter comes before me today on a somewhat different basis. I have had the advantage of a detailed submission from Miss Heah and of reading several letters of testimonial from friends of Mr Baker, including his *de facto* wife, Miss Hanney, and a letter from a Mr McKay, who has indicated that he would be prepared to provide permanent employment for Mr Baker if he is released. The letters all indicate acceptance that Mr Baker has lacked maturity and that his general outlook on life has left a great deal to be desired. But they all say that recently he seems to have changed his attitude for the better. One of them comments that she is pleasantly surprised at his positive change in direction. Miss Hanney says much the same thing, indicating that the appellant's level of maturity and his interest in improving himself shows that he is becoming "a new and much improved person" and with that change and something to work towards he could develop into a positive and productive person.

Someone has been good enough to put Mr Baker in touch with Support in Sobriety, a registered charitable trust which operates treatment centres and support houses for alcoholics. The Court has received a report on Mr Baker from that organisation which has done an assessment on Mr Baker in the prison for alcohol and substance abuse. The report indicates that there is an addiction problem with both alcohol and, perhaps to a lesser degree, with marijuana and that he registers in the late middle stages (bordering on chronic) of the National Counsel of Alcoholism Scale. Importantly, he has had no previous treatment; as Miss Heah puts it, he has had no opportunity to get off his alcohol addiction with assistance from an outside organisation.

Mr Baker has given an indication that he wishes to address his addiction and change his lifestyle and I am told that he recognises that to achieve this he will have to be totally abstinent. Support in Sobriety is prepared immediately to offer him a residential treatment bed at Zenith House, 229 Blockhouse Bay Road, for an eight week programme. Mr Baker was sentenced on 11 May so he has already, allowing for remission of sentence, served approximately one-third of the time which he could expect to be serving in prison.

In all these circumstances I have decided to assent to Miss Heah's suggestion that the Court should release Mr Baker on bail for an eight week period upon condition that he reside at Zenith House and comply with all conditions imposed in connection with the programme there and other matters by Support in Sobriety, and I am, therefore, going to release him on that basis, adjourning the hearing of this appeal until 10 September 1993. At that stage the Court will require a further report from Support in Sobriety, but, if that report is favourable and indicates that Mr Baker has behaved himself and complied with the conditions and also, and I stress this factor, remains motivated to curing himself of his addiction, then it is very likely that the Court will vary the sentence and in effect cancel the remaining term of imprisonment. However, the detail of any such variation in sentence must be left to be determined on 10 September. So on that basis the appeal is granted and I direct that Mr Baker is to be released into the custody of Mr Hetherington of Support in Sobriety upon the completion of the appropriate documentation.



Solicitors:

L. L. Heah for Appellant

Crown Solicitor, Auckland for Respondent