

NOT  
RECOMMENDED

12/11

3/9

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

AP 287/93

1460

BETWEEN

JOSEPH

Appellant

A N D      POLICE

Respondent

Hearing:      26 August 1993

Counsel:      M Ryan for Appellant  
                    M N Zarifeh for Respondent

Judgment:    26 August 1993

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ORAL JUDGMENT OF HOLLAND, J.

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The appellant pleaded guilty to a charge of burglary. He was sentenced to eight months imprisonment. The Judge in imposing sentence said that burglaries in Christchurch have reached a pitch where the clearance is low and the number of offences is high. Although the Judge did not say so in those words, he clearly indicated that persons committing the crime of burglary must expect a deterrent sentence.

I fully agree with the Judge's concern about the prevalence of burglary offences and their quite tremendous effect on the community. The Judge was accordingly quite entitled to take the view that burglary warranted a substantial deterrent element in the appropriate sentence. Such a view, however, must not be applied universally. There will always be cases where there are exceptions. I am satisfied that this was one.

The burglary was quite unusual. The only goods that were taken were two sets of curtains. The appellant says that he wanted them for his home where he as an unemployed person was responsible for five dependent children. They did not fit his home and he endeavoured to sell them. There may be grounds for suspicion but the simple fact is that of this burglary there has been no harm caused to the victim because the curtains have been recovered.

The appellant has a previous conviction for dishonesty but that was in respect of his own cash card where he obtained cash apparently legitimately but beyond the funds available in his bank account. That again was in its class of offence a very much lesser one that is usually the case where the charge is fraudulently presenting a document.

The pre-sentence report set out this man's circumstances. He was supported by the City Mission, he has health problems, is unemployed, and has five children. He has expressed substantial regret for his offending.

With respect to the District Court Judge, I consider that he has erred in applying the general principle to this man and that an exception should have been made of him. I do not consider that in this appellant's circumstances a prison term was warranted.

It disturbs me that this prison sentence was imposed on 15 July, almost six weeks ago, and the matter has not come before me until today. It did not reach the High Court until a week ago and obviously an urgent date of hearing has been allocated in this Court. Representations should have been made to the District Court that this appeal should be referred to the High Court urgently because it was the appellant's contention through his counsel that a prison term was inappropriate.

Bearing in mind the period that the appellant has already spent in prison, the appeal will be allowed and an order will be made varying the sentence to one that terminates today so that he is to be released today.

*A D Holland J*