18/11

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP 267/94

1727

BETWEEN GIBBS

Appellant

A N D DEPARTMENT OF INTERNAL AFFAIRS

Respondent

JUDGMENT OF DOOGUE J

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP 267/94

BETWEEN GIBBS

Appellant

A N D DEPARTMENT OF INTERNAL AFFAIRS

Respondent

Hearing: 9 November 1994

Counsel: A.B. Darroch for appellant
B.M. Mackintosh for respondent

Judgment: 9 November 1994

JUDGMENT OF DOOGUE J

This is an appeal against a sentence of three months' periodic detention and a reparation order of $3,500 ordered to be paid at the rate of $35 a week in respect of an offence under s. 28(1)(c) of the Gaming and Lotteries Act 1977 in that the appellant made a direct pecuniary gain from an illegal lottery that he would not otherwise have made by arranging to sell tickets and managing an illegal lottery and failing to apply the whole of the proceeds of the lottery as was required of him.

The simple factual position is that he obtained through a company acting as a licensed lottery promoter a right to sell tickets for $2 each in respect of a lottery. The participating organisations that were

represented by the company were to receive a profit share of $1 per ticket on the completion of the lottery. The appellant approached a football club and offered to sell the tickets on its behalf. It should have received therefore $1 for each ticket sold. The appellant, however, prevailed upon the club in its innocence to accept 12.5 cents for every ticket sold and to sign a form requesting 5,000 tickets in the lottery. The appellant at the completion of the lottery had received some $22,990 from it which he was required to deposit with the company involved. He deposited only half the amount, keeping the remaining half for himself. The club in question received no money at all.

It is said for the appellant that the club should not have had an order for reparation in its favour as it had signed documentation that it would not employ anyone in respect of the lottery. It is also said for the appellant that, whilst the case was stood down in the District Court for a stand-down report to consider a community-based sentence, the matter was then dealt with without a reparation report or a probation report. It is said for the appellant that he has limited means but that he is in legitimate employment and that the sentence of periodic detention detrimentally affects his ability to earn from his employment.

There is no substantial information of any description relating to the appellant before the Court. Counsel for the appellant is left to put information from the bar in relation to the limited information given by

the appellant. There is certainly no information before the Court from the appellant upon which the Court could safely rely given the particular appellant's background.

The District Court was entitled to make a reparation order provided that it gave the prosecutor and offender an opportunity to be heard on the question and provided that it considered that such a sentence should be imposed in respect of loss or damage to property only and was satisfied of the value of the loss or damage: see s. 22(2) Criminal Justice Act 1985. It is not suggested that the appellant did not have an opportunity to be heard on that question.

It is not suggested that the sentence imposed is of itself manifestly excessive or wrong in principle. It is, however, suggested that it was inappropriate because of the circumstances already traversed.

The appellant had been convicted on 10 November 1992 of organising illegal lotteries and the sentence was one of ordered to come up for sentence if called upon within one year. On 11 April 1989 he obtained monies by false pretences and was ordered to make repayment in the sum of $7,298.88. He has previous convictions of various descriptions, including other offences of dishonesty, although most of those, to be fair to him, are somewhat in the past.

The maximum sentence that the court was entitled to impose in respect of the particular offence was three months' imprisonment or a fine not exceeding $4,000. The court, in ordering reparation, ordered only part of the

sum which it could properly have ordered. There is no question that the appellant had received the monies involved. He had not transmitted them to those that he was obliged to transmit them to. He says that part of them were transmitted to other people, but once again there was no evidence as to that.

In the circumstances there is nothing before the Court to indicate that the reparation order made was anything other than appropriate. Certainly the prosecuting agency, which is the agency responsible for the administration of the Gaming and Lotteries Act 1977, regarded it as appropriate that the particular club should receive reparation. So far as the sentence of periodic detention is concerned, that cannot be said to be manifestly excessive, given the particular circumstances and the appellant's history.

The result will be that the sentences imposed in the District Court will be upheld. In terms of s. 137 of the Summary Proceedings Act 1957 the periodic detention sentence shall be resumed on the 25th day of November 1994, and the appellant is required to attend for the first occasion at the Wellington Periodic Detention Centre at 81 Thorndon Quay at 9.00 a.m. on Saturday, 26 November 1994. In all other respects the sentence is affirmed.