25/3

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

AP 30/94

260

BETWEEN GLENN DARRYN MEAGER

Appellant

LOW PRIORITY

A N D THE POLICE

Respondent

Hearing 17th March 1994
Counsel W Rosenberg for Appellant
C Lange for Respondent

ORAL JUDGMENT OF WILLIAMSON J

A subsequent lenient sentence on a co-offender and substantial new information provide grounds upon which the sentence imposed upon this Appellant in the District Court requires reconsideration.

On 6th December 1993 in the Ashburton District Court the Appellant was sentenced to twelve months' imprisonment on two charges of burglary and six months' imprisonment on a charge of driving while disqualified. The periods of imprisonment for burglary were concurrent but the period of imprisonment for driving while disqualified was cumulative.

The Appellant has an extensive list of previous convictions for offences of dishonesty as well as driving while disqualified matters. Accordingly the sentences imposed on him do not

appear unusual or excessive at first sight. Upon closer study, however, it becomes apparent that the two burglaries for which the Appellant was sentenced are of differing degrees of seriousness. The first involved his breaking a plate glass window with a rock and removing guitars and an amplifier. He later admitted to this offence saying that he was very drunk at the time and did not really know why he had committed it. The second relates to a storage shed at Countdown Limited from which a small quantity of food was taken.

The co-offender in relation to this second burglary was George Stanley Robertson. Significantly he had also committed a burglary during the previous evening at the Countdown shopping complex. Although initially it had been considered that the Appellant was involved in this offence as well, the charge was later withdrawn. The co-offender, Robertson, was not sentenced until 17th February 1994, some two months after this appellant was sentenced. Like the Appellant he was also sentenced on other charges of burglary at the same time and he had a previous history, although not as extensive as the Appellant's, of offences of dishonesty including burglary. The sentence imposed on Robertson was one of five months' periodic detention. It is clearly disparate with the sentence of twelve months imprisonment imposed upon the Appellant.

Often sentences imposed upon co-offenders differ significantly in order to give weight to varying factors relating to the particular offenders. Ultimately the test which must be applied by any appellate Court in relation to disparity is that described in the Court of Appeal decision of ***R v Lawson*** [1982] 2 NZLR 219. The Court must consider whether an independent observer, fully informed of the facts of each case, would be driven to

conclude that something had gone wrong with the administration of justice for such different sentences to have been imposed.

The Crown have pointed to differences between the co-offender and the Appellant in this case, namely, that the Appellant is aged 25 while Robertson is aged 22 and that the Appellant has a longer list of previous offending than the Appellant. In my view these matters are not so significant as might otherwise be the case because Robertson had more recently been in prison for burglary than had the Appellant and the previous offence involving Countdown, ie, on the night prior to the Appellant's involvement, had been committed by Robertson. The circumstances of the offences and the histories of the Appellant and Robertson are so similar that in my view the test already referred to would be met. So far as it is possible, with all the vagaries and variation in human behaviour, Courts must endeavour to be evenhanded in the sentences they impose. In this case in my opinion the sentences do not show that quality of evenhandedness. I accept that the Appellant has made out a good ground for his appeal in this respect.

In addition the Court has now been supplied with information of a substantial nature which was not available to the District Court Judge. This information has come from the Community Psychiatric Nurse with the Ashburton Mental Health Service and from the Appellant's mother and sister. It is to the effect that the Appellant's 27 year old brother requires constant observation and direction to cope with mental problems which he has. These problems are described in detail in a report which has been handed to the Court. They stem from an accident in which the Appellant's brother received severe head injuries. Sunnyside Hospital, who have treated the brother in the past, have concluded that he does not suffer primarily

from a psychiatric disorder and accordingly that he should not be in their hospital but rather in the care of the family or, on occasions, for respite care in Templeton Hospital. The nurse and the Appellant's mother confirm that the Appellant has been helpful in caring for the brother and appears to have special talents in this regard. The nurse, who is familiar with the family, comments that the Appellant's time and skills may be better utilised providing care for his brother.

When that matter is weighed with the fact that the Appellant had, prior to these offences, appeared to have been keeping out of trouble, that he entered a plea of guilty and co-operated with the police in relation to these matters and he has references indicating good aspects of his behaviour in recent months, I conclude that the new information supports the appeal.

One difficulty in the matter is that the Appellant, unlike his co-offender, was appearing on a charge of disqualified driving and it was the seventh offence. Imprisonment is an inappropriate sentence for such an offence.

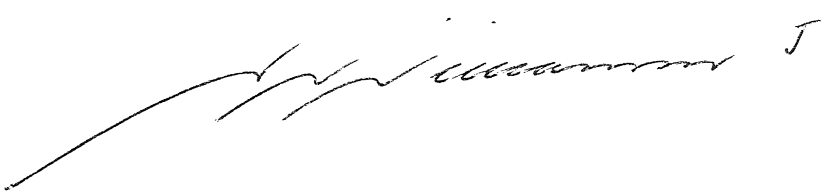
Having been satisfied that there are good grounds for the appeal, it is necessary to consider what sentence would have been appropriate and the manner in which any alteration should be made to that having regard to what has transpired since the date of sentence. It would have been appropriate for the Appellant also to have been sentenced to periodic detention on the burglary charges having regard to the sentence imposed on the co-offender. On the other hand the sentence of six months' imprisonment for a seventh disqualified driving was an appropriate sentence.

The theoretical possibilities must be considered in light of the fact that the Appellant has now spent three months in custody.

Having weighed these matters and having regard to those points already mentioned in this judgment I am of the view that the appeal ought to be allowed upon the basis that the Appellant is now released from imprisonment. His sentence of twelve months is quashed. He is to now serve a period of twelve months' supervision upon the usual terms and upon the additional terms, first, that he reside at 78 Eton Street, Ashburton, and secondly, that he carry out such courses of training or programmes and which would be of assistance in the care of his brother as the probation officer directs.

Reparation has been raised by Counsel for the Crown. The Appellant's circumstances do not point to an ability to be able to pay in full the $1,957.00 sought for reparation. In my view some portion of that amount should be paid and accordingly there will also be a reparation order in the sum of $500.00 in respect of the damage caused to the music shop. That amount is to be paid at the rate of $10.00 per week.

For the reasons given and on the basis set out this appeal is allowed. I confirm that otherwise the sentence in the District Court applies.



Solicitors W Rosenberg, Christchurch for Appellant
The Crown Solicitor, Christchurch for Respondent

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY
AP 30/94

BETWEEN GLENN DARRYN MEAGER

Appellant

A N D THE POLICE

Respondent

ORAL JUDGMENT OF WILLIAMSON J
