NZLR

NOT
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND 25/3
ROTORUA REGISTRY AP 1/94

255

BETWEEN PERRY JOHN THOMPSON

Appellant

A N D POLICE

Respondent

Hearing: 16 March 1994

Counsel: J. Bergseng for Appellant
P. Davey for Respondent

Judgment: 16 March 1994

ORAL JUDGMENT OF ANDERSON J

This is an appeal against sentences of imprisonment of up to 2½ years imposed in the District Court at Rotorua on 13 December 1993 following pleas of guilty. The appellant had pleaded to 13 counts of burglary as well as a number of thefts and obtaining by false pretences. The appeals are really directed to the sentences for burglary, the other sentences imposed being unarguably appropriate.

2 years 6 months imprisonment is a firm sentence for a property offence, particularly where a plea of guilty has been entered. Yet this appellant is an extraordinary case. He is 40 years of age. He suffers some intellectual impairment and a serious personality disorder. It is inappropriate to give details of certain aspects of his disorder but they do involve self damage. He is also a chronic and habitual criminal offender. His list of offences against property, including burglary, shoplifting and theft, covers many pages of computer readout. The present spate of offences, committed in the course of less than four weeks in October 1993, occurred a fairly short time after he was released from prison following a sentence of 1 year 6 months for burglaries. He has had much assistance

over the years from medical and other resources in our community but he will not or can not respond to help.

Many of the burglaries are of a potentially or actually sinister nature. He has entered motel units and other residential premises while people have been present, on one occasion with the occupant in a shower, and has filched goods and money. The Courts, for proper reasons, regard burglary as a serious offence. There are too many tragic cases which start out as burglaries and end up as fatalities. The Court is fully justified in approaching questions of sentence for burglary not merely in terms of deterrence but also in terms of public safety. In this case, sad though it may be that a person who is intellectually impaired must face imprisonment, nevertheless the stage has long since been reached when the overriding consideration must be the protection of the public. A sentence bearing that in mind is manifestly appropriate.

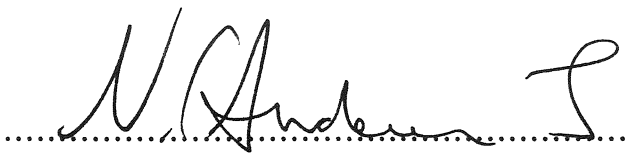
Mr Bergseng, in his very helpful submissions, does not take issue with such underlying justifications for a firm sentence but submits that:-

1. Too little credit was given for guilty pleas; and
2. Too little credit was given for co-operation with the police leading to the clearing of certain unsolved offences.

That submission is based on the inferential starting point which the learned District Court Judge must have had in mind in determining in all the circumstances an appropriate sentence of 2 years 6 months imprisonment. Mr Bergseng also submits that the learned District Court Judge may have been led to impose a firmer sentence than would otherwise be appropriate out of concern for the reputation of the local community since many of the offences were committed against tourists or other visitors.

It is certainly the case that a sentence should not be firmer because of a public sense of embarrassment in connection with the victims. Yet, as Mr Davey points out, there is a justification for taking a firm line in connection with affronts to victims who by the very nature of their presence in the city are both more vulnerable to the depredations of burglars and more likely to be harmed by the impact on them, possibly facing foreign institutions, foreign language and absence of familiar support systems.

Looking at the matter overall I think there is substance in certain of Mr Bergseng's submissions, namely those which are directed to the inferential starting point of something appreciably in excess of 2 years 6 months before allowing for the mitigating impact of guilty pleas and police co-operation. For that reason alone I allow the appeal against sentence in connection with burglary, quash the sentence of 2½ years imposed, and substitute a sentence of 2 years 2 months imprisonment on each of those matters. Diffident though I am to allow the appeal in a way which may give rise to apprehensions of tinkering with sentences, nevertheless the principle of appreciable discounts for guilty pleas and police co-operation is important in sentencing matters. The appeal is allowed accordingly.



N.C. Anderson, J.

Solicitors for Appellant: Trotter Bergseng & Co., Rotorua

Solicitors for Respondent: Crown Solicitor, Rotorua

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