

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

AP 38/94



BETWEEN TONI BRENDAN CATLOW

94/358

Appellant

A N D THE POLICE



Respondent

Hearing 17th March 1994
Counsel R A Peters for Appellant
C Lange for Respondent

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ORAL JUDGMENT OF WILLIAMSON J

Leaving aside the personal and family circumstances of the Appellant, the sentence imposed in this case of twelve months' imprisonment on charges of receiving would be appropriate. That was the primary submission made by Counsel for the Crown in this case.

The process of sentencing demands consideration of all factors which are relevant to a particular offence and a particular offender. Except in cases where deterrence is the primary objective of sentencing, eg, cases involving serious drug dealing, courts must have regard to the personal circumstances of offenders because those circumstances affect the degree of harshness involved in the punishment imposed. It is of course impossible

to apply a fine measure to such matters because of the large variations in circumstances.

In this case the Appellant was sentenced in the District Court at Christchurch on 20th January this year to twelve months' imprisonment on two charges of receiving and one month's imprisonment on a charge of cultivation of cannabis. Those terms were concurrent. The charges of receiving related to property which the police recovered from the Appellant's address on 6th December 1993. Valued in excess of \$5,000.00 it had been stolen in dwelling house burglaries in Christchurch on 20th November and 5th December. The property included videos, television, jewellery and leather jacket. A burglar by the name of Terence Edward Wilson, who was the principal offender, received a sentence of three years' imprisonment. His sentence related to matters in addition to the burglaries with which the Appellant was connected by his receiving.

The sentencing District Court Judge properly emphasised the serious nature of dwelling house burglaries and the necessity to discourage persons from such activities and from receiving property stolen in such burglaries. It is a well stated truism that if there were no receivers of stolen goods there would be less likelihood of burglars. The attitudes indicated in such an approach to sentencing must however be viewed in the context of S.6 and S.7 of our Criminal Justice Act 1985. S.6 does not apply to offences of burglary but it does to offences of receiving. That is because of the maximum penalties involved. Consequently when Courts are sentencing persons on charges of receiving it is necessary, in order to give effect to the statute, to consider whether there are adequate and appropriate sentences less than imprisonment available and to consider how short a term of

imprisonment would be consonant with promoting the safety of the community.

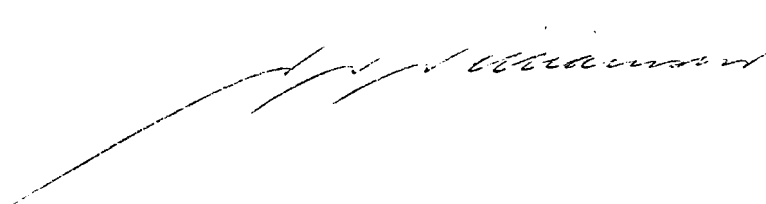
In this case the special feature is the Appellant's personal circumstances, namely, that he, with his wife, has the responsibility for the care of a young daughter who has unique physical difficulties which now require major surgery. That surgery is to take place in Wellington Hospital on 5th April. The Appellant's wife, who is pregnant, would be greatly assisted by the Appellant during the period when the surgery is to take place, the assistance being not only emotional support but also physical and practical support in looking after the daughter and the couple's other children.

Compassionate circumstances such as this cannot result automatically in reduced sentences but they may alter the nature of the appropriate sentence. It is apparent, from reading the probation report and the latest report from the hospital paediatrician, that this family has peculiar and unusual circumstances which call for assistance from other members of the community.

The probation officer, in his report, recommended periodic detention with nine months' supervision upon the usual conditions and upon a special condition that the Appellant attend counselling as directed by the probation officer. Under the provisions of the amended Criminal Justice Act it is possible for a period of supervision to be imposed in addition to a period of imprisonment provided that the imprisonment is of twelve months or less. In view of the provisions of S.7 already referred to and the unique circumstances of the offender's family, I conclude that the recommendation

of the probation officer be acceded to and that a period of supervision should be part of the sentence imposed.

After reaching this conclusion and giving weight to the submissions made and the new information available I accept that it has been shown that the sentence imposed upon this Appellant, in these particular circumstances, was inappropriate. Accordingly the sentence of twelve month' imprisonment is varied to one of six months' imprisonment on each charge to be served concurrently and in addition a sentence of nine months' supervision cumulative upon the sentence of imprisonment. This supervision is to be upon the usual terms and upon the special term that the appellant is to take such counselling as the probation officer directs.

A handwritten signature in black ink, appearing to be 'J. Williams', written in a cursive style. The signature is positioned to the left of a small, isolated capital letter 'J.' which is located to the right of the signature's main body.

Solicitors R A Peters, Christchurch for Appellant
The Crown Solicitor, Christchurch for Respondent