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NZCR

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP.93/96

**NOT
RECOMMENDED**

BETWEEN NIKKI GERRARDINE TERESE
HOLMES-KINSELLA

Appellant

AND ACCIDENT REHABILITATION
AND COMPENSATION
INSURANCE CORPORATION

Respondent

Hearing: 7 June 1996

Counsel: *Robert Weir* for Appellant
Gina de Graaf for Respondent

Judgment: 7 June 1996

ORAL JUDGMENT OF TOMPKINS J

Solicitors:

R A A Weir, Auckland for Appellant
Meredith Connell and Co, Auckland for Respondent

On 1 April 1996 in the District Court at Henderson, the appellant, having pleaded guilty to three charges of failing to advise the Accident Rehabilitation and Compensation Insurance Corporation ("ACC") that she was in receipt of the unemployment benefit, continued to receive an ACC benefit. She was sentenced to periodic detention for three months, to six months supervision and to an order that she pay reparation of \$3000 by instalments of \$30 a week. She has appealed against sentence and in particular the sentence of three months periodic detention.

This was a serious offence. The ACC system is dependent upon the honesty of those claiming under it. It is all too easy to defraud the system by those minded to do so. Unfortunately such a fraudulent approach is all too common. It amounts to theft from the community, frequently over a long period, in this case two and a half years. The Judge was correct when she said that the courts are bound to impose a sentence that will deter others minded to do likewise.

It was my impression when I read the file before hearing submissions that the sentence was unduly light and that such a persistent pattern of thieving could well justify a full time custodial sentence.

Mr Weir recognises that the sentence was not manifestly excessive. But, it was his submission that it was inappropriate and that the appropriate sentence was a lengthy term of community service, advancing three reasons in support. First, that the appellant is breast feeding a four month old baby. Secondly, that she lives at Whangaparaoa, long way from the periodic detention centre at Takapuna, and thirdly she has a medical history of a back complaint.

In view of the seriousness of the offending to which I have referred, I am satisfied that this appeal cannot succeed. That she is breast feeding a baby and she has a medical condition can adequately be handled by the periodic detention centre. The distance she has to travel is simply part of the punishment. The offence is so serious that a custodial sentence is justified and as I have indicated, I think she is fortunate that it is not a full time custodial sentence.

The appeal against sentence is dismissed.

Chambers J