

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A.P. 57/97

BETWEEN JOSEPH HARRY HERBERT
 AKA JASON GAGE

NOT
RECOMMENDED

Appellant

AND

POLICE

Respondent

Hearing: 7 April 1997

Counsel: C. Edwards for appellant
 W.E. Andrews for respondent

Judgment: 7 April 1997

(ORAL) JUDGMENT OF BARKER J

Solicitors: Crown Solicitor, Auckland, for respondent

This is an appeal against a sentence of 2 years' imprisonment imposed on the appellant in the District Court at Otahuhu on 20 January 1997. At the same time the appellant received a concurrent sentence of 9 months' for assault.

On 13 November 1996, the appellant burgled the house of a neighbour of his mother in Mangere. He broke the safety chain and took items of somewhat under \$5,000 in value; he loaded the property into a utility vehicle. He was seen by neighbours and by the householder. She approached him when he was in the ute; she was trying to ascertain what he was doing on her property and why he had taken her property. The appellant's response was to rev the engine and reverse the vehicle, nearly hitting the complainant as she held the passenger door. He then drove off at speed. None of the property has been recovered.

The Judge addressed the appellant as a professional burglar. Looking at the appellant's list under his own name and under an acknowledged alias, the Judge's description was clearly accurate.

Mr Edwards says that the penalty was excessive because the Judge did not take into account the fact that the appellant was under the influence of drugs, or addicted to drugs and alcohol.

In my view, the learned District Court Judge was quite entitled to regard this as serious offending. I do not think it can be said by any stretch of the imagination that his sentence was manifestly excessive. Indeed, if the appellant had been charged, as well he might, with assault for the purposes of facilitating flight, he may have received a longer sentence.

Looking at the totality of the offending, a term of 2 years' imprisonment is by no means excessive. The Courts have a duty to impose deterrent sentences for professional burglars. As recent statistics show, there are far too many unsolved burglaries. Every burglary leaves a householder with a sense of grief at the violation of their own home. Persons such as the appellant have to be taught that they have no right to violate people's homes in the manner in which this appellant is accustomed.

I note with concern in the probation report that the appellant told the probation officer he could not guarantee he would not offend in this manner again. In view of that intimation, there was clearly an element of protection of the public which had to weigh with the District Court Judge. I believe the District Court Judge correctly assessed the penalty. If anything, he was kind to the appellant.

The appeal is accordingly dismissed.

R. J. Barker, J.