NZLR

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

AP 10/97

BETWEEN **CRAIG ANTHONY HEWITT**

Appellant

AND **POLICE**

Respondent

Hearing: 8 April 1997

Counsel: Appellant in Person
L Mataheare for Respondent

Decision: 8 April 1997

ORAL DECISION OF GENDALL J

Solicitor:

Crown Solicitor's Office, Dunedin

And to:

C A Hewitt, 17 Winifred Street, Green Island, Dunedin

This is an appeal against two concurrent sentences of two months periodic detention imposed upon the appellant Craig Anthony Hewitt in the District Court at Dunedin on 5 February 1997. The appellant had pleaded guilty to a charge of assault under the Summary Offences Act and also a charge of obtaining credit by fraud in breach of s247 of the Crimes Act 1961.

The facts were that the appellant and an associate, who shared his flat, ordered a various menu of takeaway foods by telephone without money for which to pay for those meals. When the owner of the takeaway premises arrived with the food the appellant and his associate refused to pay for it and assaulted the takeaway premise's owner. The appellant's excuse to the District Court Judge was that he had been drinking heavily and lost his temper. He asked the learned District Court Judge to impose a fine and was resistant to the idea of periodic detention. He said he had poor health. He has a substantial history of convictions for offences of violence, dishonesty and sexual offences and has served terms of imprisonment on frequent occasions over the past seven years.

The appellant has submitted he has asthma which will affect his ability to serve a sentence of periodic detention. He has also submitted that on previous occasions when he served such a sentence he was subjected to abuse, threats and intimidation to the extent that he felt his life was in danger. He has tendered a statement from a Minister of Religion which simply records that which the appellant has said to the Minister. It is probable, given the appellant's convictions and nature of some of them, during the time when he was serving terms of imprisonment he did not always meet the favour of other more robust prisoners given that those terms of imprisonment were for indecency offences. However, I am quite satisfied that the learned District Court Judge was correct in his assessment of the position, namely that the appellant was quite capable of doing a short period of periodic detention. Two months would be considered short in anyone's language. If there is any possibility of intimidation or assaults upon the appellant then that can be quite comfortably dealt with by the Warden and the Police. It seems to me that in the material before this Court the appellant's aversion to periodic detention is one of laziness and I am satisfied that the learned District Court Judge was correct in his assessment of the position.

The appeal has no merit and is dismissed.

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J W Gendall J