IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CRI-2009-409-000056
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ANTHONY TREVOR GRAFTON

v

POLICE

Hearing: 25 June 2009

Appearances: S Poore for Appellant
R M Thomas for Police

Judgment: 25 June 2009

ORAL JUDGMENT OF HON. JUSTICE FRENCH

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[1] This is an appeal against sentence.

[2] Following pleas of guilty, the appellant was convicted in the District Court of five charges: possession of an offensive weapon, intentional damage, theft, disorderly conduct, breach of community work and breach of supervision. He was sentenced to a term of imprisonment of 11 months in total.

[3] The facts of the offending were as follows.

[4] On 13 February this year the appellant became involved in a heated altercation in central Christchurch. Members of the public were so concerned by his

behaviour that they approached the police. As the appellant walked towards Cashel Mall, he kicked CD stands outside a shop and attempted to kick a Red Cross donation sign.

[5] Seven days later, on 20 February, the appellant was in Cathedral Square. He had been sniffing solvents and was in an intoxicated state, when he approached a public telephone box and violently kicked two windows, breaking them. He was abusive to police and threatened physical violence.

[6] He was charged with intentionally damaging the phone booth.

[7] Then, while on bail, he stole some razors and a craft knife, followed by an incident on 27 February when the appellant went to a medical centre, approached a doctor and demanded drugs under threat of killing himself. He produced a plastic-handled, altered razorblade and used it to cut his left forearm in front of the doctor.

[8] The breach of supervision had occurred when the appellant was instructed to report to the Peterborough Street office, but instead turned up at the Stanmore office in an intoxicated state, with a six-pack under his arm. As regards the breach of community work, the appellant was currently subject to community work sentences totalling 205 hours. As at the date of the sentencing at issue on this appeal, it seems he had completed only one hour of those sentences.

[9] The pre-sentence report told the District Court Judge that the appellant is 39 years of age, single and at that time of no fixed abode. Sadly, he has a prolific history of recorded offending dating back to 1986. The general pattern of his offending was said to be nuisance-type offending. During 2008 he incurred convictions for obscene language, offensive behaviour, disorderly behaviour, fighting in a public place, breach of liquor ban, shoplifting, common assault, careless driving, refusing a blood specimen, together with offences for non-compliance with Court orders. Already in 2009, in addition to the current offences, he had incurred four convictions for disorderly behaviour and breach of liquor ban.

[10] Unsurprisingly, the appellant is assessed by the report writer as being at high risk of further offending. The key factors contributing to his ongoing recidivism are said to be his chronic substance abuse issues and transience. The report went on to say that attempts to engage with the appellant over the last year during sentences of release conditions and supervision have been frustrated by him continually reporting in a substance-affected state in which it is impossible to work with him.

[11] Accordingly, the report writer recommended imprisonment. The writer assessed the appellant as being unable to comply with community-based sentences and, given the lack of any fixed abode, did not consider electronically monitored sentences an option. Imprisonment was seen as an opportunity for the prison reintegrative team to commence working with the appellant while he is sober in order to try and address his accommodation and alcohol and drug issues.

[12] In sentencing the appellant to a term of imprisonment of 11 months, the Judge identified the lead offence as the possession of an offensive weapon. He adopted a starting point of nine months in relation to that offence, with an uplift of three months for the fact that it occurred while on bail and while the appellant was subject to a sentence of the Court. The Judge then gave the appellant a discount for the guilty plea, reducing the end sentence to nine months.

[13] In respect of the intentional damage charge, the Judge imposed a sentence of two months' imprisonment, with one month's imprisonment on the theft charge. The Judge said that while those two sentences would be concurrent with each other, he was satisfied they should be cumulative on the nine months imposed for the possession of the offensive weapon. In relation to the disorderly behaviour charge, the Judge said he considered that to be a fineable matter only, and convicted and discharged the appellant. Similarly, the breach of supervision, which the Judge regarded as only a technical breach. The appellant was duly convicted and discharged. The Judge did, however, impose a sentence of one month's imprisonment for the breach of community work, and cancelled the community work sentence, as well as the supervision sentence.

[14] My reading of the sentencing notes suggests the Judge may well have intended that the sentence of one month's imprisonment for the breach of community work was to be cumulative. However, he has not specified that, and accordingly it has been treated as concurrent. Hence the total sentence being 11 months instead of the possibly intended 12 months.

[15] The appellant appeals the sentence on the grounds that it was manifestly excessive.

[16] The grounds of the appeal are two-fold, and are as follows:

i) The Judge failed to give credit for the fact the appellant was not in possession of the knife to harm anyone else, only himself.

ii) There has been a change of circumstance in that the appellant has now been able to secure accommodation. This new accommodation is to be back with his mother in Hastings. Therefore it is no longer correct to say imprisonment is the only available option for the appellant, as it was at the time of the pre-sentence report and sentencing.

[17] It appears the appellant has made progress in prison, and that his mood is now more stabilised.

[18] My task on appeal is to determine whether or not the sentence that was imposed was manifestly excessive.

[19] In my view the sentence that was imposed in this case was well within range. The reason the appellant had the knife in his possession was so as to coerce the doctor into giving him drugs. Therefore I do not accept the appellant was entitled to any credit on account of the fact that he then used it to harm himself instead of the doctor.

[20] In any event, even if he was entitled to some credit for the fact his only purpose was to harm himself, that would still not in my view mean the sentence could be characterised as manifestly excessive.

[21] I am satisfied the Judge has considered all relevant factors and imposed a sentence that was available to him.

[22] In my view, the fact the mother is now able to provide accommodation is not a matter that in the circumstances of this case warrants appellate intervention.

[23] The appeal is accordingly dismissed.

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