IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

CRI 2009-463-100

BETWEEN	PAKURA TIOKE Appellant
AND	NEW ZEALAND POLICE Respondent

Hearing: 9 December 2009

Appearances: Rebecca Plunket for Appellant
Hayley Derrick for Respondent

Judgment: 9 December 2009

JUDGMENT OF HARRISON J

SOLICITORS
Rebecca Plunket (Whakatane) for Appellant
Gordon Pilditch (Rotorua) for Respondent

Introduction

[1] Mr Pakura Tioke appeals against a sentence of one year and eight months imprisonment imposed upon him in the District Court at Whakatane on 21 October 2009 following his pleas of guilty to two charges of burglary.

[2] Mr Tioke's counsel, Ms Plunket, has succinctly raised two issues on appeal: first, whether the length of the sentence was manifestly excessive, which will in turn be determined by the accuracy of the starting point and, second, whether a sentence of home detention should have been imposed.

[3] Before dealing with the substance of the appeal, I wish to compliment Ms Plunket and Ms Derrick for the quality of their submissions both written and oral.

Facts

[4] The material facts are depressingly common and not in dispute.

[5] On 6 June 2009 Mr Tioke went to an associate's house. He arranged for the associate to drive Mr Tioke and a friend to another property in Kawerau. Once there Mr Tioke broke open a door to a sleep-out and removed a 29 inch television set valued at $400. He was interrupted by a neighbour. While making good his escape Mr Tioke dropped the television set, damaging it beyond repair.

[6] Mr Tioke then arranged for his associate to drive to another address in Kawerau. He smashed open a back door to gain entry to the house. He removed a 26 inch television set valued at $200. He was able to make good his escape on this occasion. He drove to another address where he sold the set to another associate.

[7] Mr Tioke admitted his offending. He justified it on the ground that he was bored, drunk and needed money.

Starting Point

[8] Against these brief facts Judge Rollo adopted a starting point of what he called "around two years". He adjusted the starting point upwards to two years and six months to take into account Mr Tioke's previous criminal history. He was then 22 years of age. He had three convictions for burglary since August 2007. Following his conviction for two of them in October 2008 he was sentenced to nine months imprisonment. Subsequently, immediately following his release, he was found unlawfully in an enclosed yard.

[9] The Judge allowed a discount of one third for Mr Tioke's pleas of guilty. He imposed an end sentence on both charges of 20 months imprisonment to be served concurrently.

[10] In support of Mr Tioke's appeal Ms Plunket submits, as she did in the District Court, that an appropriate base starting point was 12 months. She acknowledges that an increase was warranted for Mr Tioke's previous offending. In her submission the end starting point should have been 18 months.

[11] In opposition for the Crown Ms Derrick supports the Judge's assessment. She submits, in particular reliance on *R v Stevens* [2009] NZCA 190, that a base starting point of 18 months was justified. She allowed for a further uplift of 12 months on account of Mr Tioke's previous offending. With a degree of responsibility and realism, Ms Derrick accepts that that additional 12 months would be at the very outer boundary of what might be justifiable.

[12] I agree with Ms Plunket. In my judgment the end starting point adopted by Judge Rollo was excessive. By reference to analogous authority in the Court of Appeal, particularly *Stevens* and *R v Columbus* [2008] NZCA 192, I am satisfied that the appropriate base starting point for both offences taken together was 15 months. An increase of six months was justifiable for Mr Tioke's previous burglary offending. The end starting point should be 21 months imprisonment.

[13] Against that, as the Judge recognised, Mr Tioke is entitled to a full 33% discount for his pleas of guilty, leading to concurrent sentences of 14 months imprisonment.

Home Detention

[14] Mr Plunket submits also that the Judge erred in dismissing the alternative sentence of home detention. I endorse his approach, however, or, alternatively, I am not prepared to interfere. Judge Rollo took into account Mr Tioke's escalating pattern of burglary offending. He noted that Mr Tioke had previously had the benefit of community work and reparation sentences. Then, as noted, imprisonment was imposed for the two burglary convictions in October 2008. Subsequently Mr Tioke had committed the analogous offence of being found unlawfully in a yard. He had also been convicted for unlawfully interfering with a motor vehicle in February 2008.

[15] The Judge was properly influenced by the principles of deterrence and denunciation in Mr Tioke's case. It will only be rarely that an appellate Court should interfere with the exercise of a discretionary power by a sentencing Judge who does not consider home detention as a realistic alternative. Accordingly this ground of appeal is dismissed.

Result

[16] In the result the two sentences of imprisonment of one year and eight months imposed on each count of burglary are quashed and substituted by concurrent sentences of one year and two months on each.

_____

Rhys Harrison J