

COURT OF APPEAL

McMURDO P  
McPHERSON JA  
MACKENZIE J

CA No 55 of 2002

THE QUEEN

v.

PAUL NEVILLE VAN HOUT

BRISBANE

..DATE 14/05/2002

JUDGMENT

JUDGMENT

THE PRESIDENT: This is an application for leave to appeal against a sentence imposed on the 26th February 2002 of three months' imprisonment, suspended after serving 14 days, with an operational period of 12 months. The applicant was granted bail pending appeal after serving a few hours in custody.

The applicant was originally sentenced on the 3rd November 2002 to 80 hours community service without conviction, with a special condition that he pay compensation in the sum of \$1,821 at \$50 per week commencing on Friday, 10 November 2000.

The applicant completed only 25 of the 80 hour community service order, leaving 55 hours outstanding. He failed to complete the compensation payments, paying only \$500 with \$1,321 outstanding.

The Community Corrections officer's court report noted that at the time of receiving this community service order the applicant was also the subject of a fine option order which required him to perform 160 hours of community service, 86 hours of which were outstanding at the time of his sentence. He has since completed the 106 hours.

It is not in contention that the applicant breached his community service order. He failed to report to the Community Correctional office within 72 hours of the order being made. He was then directed to report on 6 December

JUDGMENT

2000. It was not until May 2001 that he signed work instructions in relation to the 80 hour order. He completed the earlier community service hours under his fine option order on the 12th August 2001. The 80 hour order had to be complied with within 12 months of the sentence, namely 2 November 2001. He last reported for community service on 23 September 2001.

The applicant's counsel submitted at sentence that he breached the order because he lost his job and could not pay the compensation nor his rent, and was effectively moving from one friend's residence to another. He lost contact with his Community Service Corrections officer. By the time of sentence in February this year, he had obtained employment and offered to complete the remaining 55 hours' community service and to recommence paying the compensation, completing it over a nine month period.

The learned sentencing Judge was understandably concerned that the applicant had not taken advantage of the opportunity given to him to make compensation and complete the community service order without conviction. He resented him for the original offence.

The circumstances of that offence were that the complainant, a 21 year old student from North Queensland, was studying in

JUDGMENT

Queensland and was given a Telstra telecard by her father. The complainant allowed a friend to use the card on one occasion. The applicant was present at that time and he obtained the details. Between 30 October 1999 and 10 March 2000 he made a total of 1,513 unauthorised calls. When questioned by police in April 2000 he made full admissions. He looked through the telephone bills and identified the unauthorised phone calls made by him. These calls were billed at \$1,821. The applicant was 24 when he committed the offence and 25 when first sentenced. He pleaded guilty at an early stage by way of ex officio indictment. His only prior conviction was for possession of utensils or pipes in the Stanthorpe Magistrates Court on 1 October 1999 for which he was fined \$200.

Although I understand the learned primary Judge's disappointment with the applicant for not taking advantage of the opportunity given to him, the applicant was still comparatively young, 26 at the time of his sentence for the breach. He had no prior convictions for dishonesty and only one relatively minor conviction. He pleaded guilty at an early stage. These factors, combined with the circumstances of the offence which was not the most serious of its type to come before the District Court, did not in my view warrant an actual term of imprisonment even though the applicant had

JUDGMENT

shown by his subsequent behaviour that he was undeserving of a community-based order. Nor did his subsequent behaviour suggest that he was capable of paying a fine.

His conduct warranted punishment and in these circumstances, the appropriate course was to resentence the applicant, convict him and sentence him to three months' imprisonment, fully suspended with an operational period of 12 months. The applicant concedes that the wholly suspended sentence should be accompanied by an order for compensation under s 35 Penalties and Sentences Act 1992 (Qld). The applicant does not contend that this penalty is a heavier penalty than that imposed at first instance.

I would grant the application for leave to appeal, allow the appeal and amend the order imposed at first instance by suspending the sentence forthwith and by further ordering under s 35 Penalties and Sentences Act 1992 (Qld) that the applicant pay compensation in the sum of \$1,321 to the Deputy Sheriff of the District Court at Brisbane for transmission by him to Emily Louise Rigby of an address to be notified by the Director of Public Prosecutions within 12 months of today's date, in default three months' imprisonment.

I would otherwise confirm the order imposed at first

JUDGMENT

instance.

McPHERSON JA: I agree.

MACKENZIE: I agree.

THE PRESIDENT: That is the order of the Court.

-----

JUDGMENT