

DISTRICT COURT
APPELLATE JURISDICTION
JUDGE RICHARDS

COLIN MARK WOODARD

Appellant (Defendant)

and

POLICE

Respondent (Plaintiff)

IPSWICH

..DATE 06/04/2009

JUDGMENT

HER HONOUR: This is an appeal from a sentence imposed in the Magistrates Court at Gatton on the 14th of October 2008, wherein the appellant was convicted of five counts of stealing and two counts of possession of tainted property.

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The learned Magistrate ordered that the appellant be subject to an 18 month probation order and convictions were recorded. The appellant was 45 years of age at the time of the offence and the sentence, and he has a New South Wales criminal history, although it is very old.

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MR HARRISON: Your Honour, I hate to interrupt, that-----

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HER HONOUR: That's wrong.

MR HARRISON: -----New South Wales criminal history is not correct as we understand.

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HER HONOUR: Yes. He has a - sorry, I'll correct that. He has a criminal history in Queensland dating back to 1980-1981 for dishonesty offences. But, because of their age and his age at the time of the offending, they were not taken into account on sentence, and that was appropriate. The offences, themselves, relate to the theft of various items from the Plainlands Hardware Store, together with the theft of petrol from the BP College View, and the possession of two motor cycles reasonably suspected of being tainted property.

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The appellant represented himself at this appeal and indicated that during this period of time, that is from June 2008 to July 2008, he was suffering from depression, and a report was handed up to the Magistrate in relation to treatment he'd received for that depression. And, it seems from the report, that he'd been suffering from ongoing depression since about August of 2004 and had been taking medication - initially Zoloft, but that, apparently, was not helping, and then from March 2008, Efexor, but this was still not helping. And he was still suffering from depression, anger, memory loss, headaches, poor concentration and he was referred to a psychiatrist, and at the time of the sentence, was receiving psychiatric treatment for his condition.

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At the time of sentence, the appellant was working as a motor dealer having his own car yard called Lockyer Valley Motors, where he would sell second hand cars. To sell second hand cars, he needs a motor dealers' licence, and to have that licence, he is not able to have a conviction recorded against his name for offences of dishonesty that attract a head sentence of three years or more.

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Unfortunately, he did not make the learned Magistrate aware of this problem. Although he may have done, had the Magistrate thought to ask him about whether a conviction should or should not be recorded or, at least about whether he wanted to make any submissions about that. The learned Magistrate doesn't seem, in his judgment, to have considered the provisions of section 12, and therefore, did not ask for any submissions on

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the subject and submissions were not made. In my view, that
does amount to an error of law, and then it follows that it
falls to me to sentence Mr Woodard afresh.

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Given the fact that he was suffering from depression at the
time of the offences, and that that seems to have affected his
ability to concentrate and his memory, and that much was said
during the sentencing submissions, that, despite his age, the
sentence of probation was appropriate.

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However, given the fact that his employment of 20 years has
effectively been terminated by the recording of convictions,
it's my view that the recording of convictions were too harsh
a penalty, and that it was not appropriate to record the
convictions.

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I'm now told that the affect of the recording of convictions
is that this appellant is verging on the brink of bankruptcy,
so the appeal's allowed. The sentence is set aside to the
extent that no convictions are recorded, otherwise the
sentence will remain.

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You're seeking a costs order?

MR HARRISON: I am, your Honour.

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HER HONOUR: Yes. Anything you want to say about that?

MS CHRISTOPHERSON: Your Honour, could I-----

HER HONOUR: It's the usual order. So I'm not particularly inviting submissions unless there's some special reason why it shouldn't be?

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MS CHRISTOPHERSON: No, I don't have any submissions, your Honour.

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HER HONOUR: All right. I'll order that the respondent pay the appellant's costs, to be assessed unless otherwise agreed. Thank you.

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