71/89

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v DAY

Crockett, Murphy and Nathan JJ

1 December 1989

SENTENCING – THEFTS OF MOTOR CARS – VEHICLES STRIPPED – PLEA OF GUILTY BY ACCUSED – PRIOR CONVICTIONS FOR DISHONESTY – CUSTODIAL SENTENCE IMPOSED – WHETHER EXCESSIVE: *PENALTIES AND SENTENCES ACT* 1985, S4.

Accused pleaded guilty to theft of six motor cars, of which accused was involved in the stripping of most of the 6 and using some of the parts for his own purposes. Prior convictions for theft-related offences; sentenced to 3 years' imprisonment with a minimum of 2 before eligible for release on parole. Upon application for leave to appeal—

HELD: Application dismissed. No error shown.
Having regard to the circumstances of the offences, the accused acted not only wrongfully but quite ruthlessly in his total disregard for the property of others and it was incumbent on the court to impose salutary punishment but taking into account the fact that the accused had given an early indication of his intention to plead guilty to the offences.

CROCKETT J: **[1]** The applicant pleaded guilty to six counts of theft at the County Court at Melbourne. At the time of the thefts, he was aged between twenty and twenty-one years. He admitted fifteen prior convictions from four court appearances between October 1983 and February 1987. The prior convictions included four offences of theft of motor cars, the theft of a motor cycle and an offence of criminal damage.

After hearing a plea for leniency on behalf of the applicant, the sentencing Judge imposed terms of imprisonment with respect to each of the offences and after he pronounced cumulation orders the effective sentence was one of three years' imprisonment. In respect of that, the Judge directed that the applicant serve a minimum term of two years. The applicant now seeks leave to appeal against the sentence and relies upon two grounds. The first is that the Judge failed to give any weight in the sentencing process to the principle of rehabilitation. The other is that the sentence was in all the circumstances manifestly excessive.

So far as the first ground is concerned, counsel has pointed out that during the course of the plea a number of mitigating factors that bore on the possibility of rehabilitation were placed before the Judge; they involved such matters as the consistency of his employment, his family situation and the adoption by him of different and more law abiding associates. The contention was that the Judge failed to incorporate those matters in his formulation of an appropriate sentence, or to indicate he had formed any view **[2]** of the applicant's prospects of rehabilitation. In regard to the form in which the plea took, I would have thought it clear that the Judge did have before him all the matters that bore on the possibility of rehabilitation, that he evaluated them and that that evaluation was reflected in what he concluded was an appropriate sentence. In my view that ground has not been sustained.

So far as the second ground is concerned, the principal feature relied upon in support of this was that the applicant had pleaded guilty to the offences, moreover, that when first interviewed by the police, he made a full confession concerning the part he had played in the commission of the offences of theft. Indeed, he had disclosed his participation in the offences in circumstances where, but for his confession, there would have been no evidence to establish the existence of the offences, still less the identity of the offender.

It is pointed out in this connection also that it was shortly after the committal that the applicant's advisers indicated his intention to plead guilty to the offences of theft. In those circumstances it is contended that a significant discount should be made for the fact of the plea

and the time of its communication to the authorities. The time when an indication of an intent to plead guilty is transmitted to the prosecuting authorities has, since 1st July, been a material factor required to be borne in mind by sentencing Judges having regard to the amendments that were effective from that day to s4 of the *Penalties and Sentences Act*. It was said that not only had the **[3]** applicant confessed his culpability to the offences of theft from the outset, but also that he had done so consistently from the time of his apprehension, and that the circumstances in which that admission of complicity was made were a clear demonstration of his remorse. The Judge when passing sentence said:

> "It is in your favour that you have pleaded guilty to these offences. By reason of your plea of guilty I propose to fix a lesser sentence than I would otherwise regard as appropriate for them. It is also in your favour that you have admitted to police your involvement in the offences."

I, for my part, do not think it could be said that the Judge has failed to give proper weight to the circumstances to which I have been making reference, or that he has failed to give a sufficiently significant discount to the applicant by reason of those matters. Looked at overall it is, I think, not possible to say that the sentence imposed was excessive. The applicant had stolen six motor cars from the Werribee, Carlton and Melbourne areas and four of the cars stolen were partly stripped. He used some of the parts of the stolen cars for his own use, transferring these parts on to other cars that he owned. The cars referred to in counts 4 and 5 are each late model vehicles, one with an estimated value of $30,000 and the other $20,000. The car referred to in count 5 had, on recovery, been stripped of panels, wheels and tyres. The shell had been set on fire. There was no evidence that the applicant had fired the shell and he, in fact, specifically denied having done so.

Nevertheless, it is clear from the account he gave the police and the circumstances in which each of the thefts **[4]** occurred, that he had acted not only wrongfully but quite ruthlessly in his total disregard for the valuable property of others. He had been convicted on four other occasions for theft, thus on this occasion it was obligatory that a salutary punishment be meted out to him. He cannot, in the circumstances, complain that the sentence was excessive. Accordingly, I find that the second ground has not been made out and I propose that the application be dismissed.

MURPHY J: I agree.

NATHAN J: I agree.

CROCKETT J: The application is dismissed.

APPEARANCES: For the Crown: Mr M Hugh-Jones, counsel. JM Buckley, Solicitor for the DPP. For the applicant Day: Mr L Lasry, counsel. Maurice Blackburn & Co, solicitors.
