

34/85

COUNTY COURT OF VICTORIA

R v PEPPER

Judge Hogg — 20 February 1984

CRIMINAL LAW – SENTENCE – BOND PURSUANT TO S13 OF THE *ALCOHOLICS AND DRUG-DEPENDENT PERSONS ACT 1968* – BREACHED – OPTIONS AVAILABLE TO COURT UPON BREACH.

Where a person is guilty of breaching a recognizance pursuant to the provisions of s13 of the *Alcoholics and Drug-Dependent Persons Act 1968*, in addition to the forfeiture of the recognizance, the Court has two options. It may:

(a) commit the person to prison for the period specified in the recognizance; or

(b) direct that the person serve no period of imprisonment at all.

JUDGE HOGG: Raymond Royce Pepper, you are before me on a breach of a Section 13 bond which I granted to you on 1st April 1981 at Morwell. On that occasion you were convicted of assault with intent to rob and I sentenced you to a term of imprisonment for two years. You were then released on the Section 13 bond. I have heard evidence from Mrs Kendall from the Gresswell Centre and also you have given evidence before me. I am satisfied that you have failed to observe the conditions of this bond, in particular, in that on 31st July 1981 you failed to attend at the Gresswell Centre to keep an appointment. I am satisfied that when you left with your girlfriend to go to New South Wales in July of 1981 you did not intend to keep your appointment as at the 31st July.

I therefore find that there has been a breach of your recognizance and in my view, your conduct does amount to misbehaviour with the meaning of Section 13 sub-section 5. Under that sub-section, I then am required to forfeit your recognizance, which I do. Thereafter, in my view, the sub-section gives me a discretion as to whether I commit you to prison for the term of imprisonment or not. The view I take is that I have two options: one is to commit you to prison for the period of two years, and no lesser period; secondly, that I am not required to direct you to serve a period of imprisonment. It seems to me, in view of what has occurred during the intervening period, that it would be harsh if I committed you to prison for a term of two years. I believe the appropriate course would be for me to commit you to prison for a shorter period of time. But under the section, I do not believe that I have the power to do that. I believe it is a period of two years or not at all.

In view of that dilemma, I propose not to send you to prison for two years. It follows that I, therefore, will not be committing you to prison at all. It seems to me if that is the interpretation of sub-section – or the correct interpretation, then consideration should be given to the advisability of amending the sub-section to give the sentencing judge wider powers in relation to these matters. In this case, since April of 1981, you have served two periods of imprisonment and you are also, in addition, on a two year good behaviour bond for unrelated offences. You have also attended, for varying periods of time, two rehabilitation centres in New South Wales in an attempt to overcome your alcoholic problem. I have also been informed that you spent 36 days in custody awaiting trial for this offence prior to April of 1981. You have told me that you have been in custody since the 4th February. Altogether, on those figures, you have spent a period of some 100 days in imprisonment. If that is correct, that is equivalent to a sentence of some five months, after taking into account remissions for good behaviour. That is an approximate sentence. I take that into account also in relation to this matter.

So for those reasons, it seems to me that when I am faced with the two alternatives, the alternative of sending you to prison for two years is a harsh alternative. I do not propose to follow that. As a result, I am left without power to send you to prison for a shorter term, which I think is the appropriate course. Therefore, I shall make no further order. The recognizance of \$500 is forfeited and in default of payment you will be imprisoned for one month.