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SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v DAVIES

Young CJ, Crockett and Nathan JJ

4, 5 December 1989

SENTENCING – HANDLING STOLEN GOODS – MOTOR CAR – HANDLED BY MOTOR CAR TRADER – WHETHER SERIOUS OFFENCE – TRADER OF UNBLEMISHED CHARACTER – WHETHER CUSTODIAL SENTENCE APPROPRIATE.

Accused a licensed motor car trader for 10-11 years - no prior convictions - unblemished character - very high reputation in community - found guilty of handling a stolen motor vehicle - sentenced to 9 months' imprisonment with 3 months suspended for 12 months. Upon application for leave to appeal—

HELD: Application dismissed. Imposition of a custodial sentence not inappropriate.
The handling of stolen goods is a serious offence and must attract condign punishment. In sentencing for such an offence, specific and general deterrence are important considerations.

YOUNG CJ: [2] This is an application by Robert Francis Davies for leave to appeal against a sentence imposed in the County Court at Shepparton where he was charged with one count of handling stolen goods. He pleaded not guilty, but after a trial lasting four days the jury returned a verdict of guilty, and after a plea had been made by counsel on the applicant's behalf, the learned sentencing Judge imposed a penalty of nine months' imprisonment of which three months were suspended for twelve months. It is against the sentence so imposed that the applicant now seeks leave to appeal to this Court by notice of application for leave to appeal which states four grounds:

> "1. That the sentence is manifestly excessive.
>
> 2. That the learned trial Judge erred in that he placed undue weight on the principle of general deterrence in all the circumstances of the case.
>
> 3. That the learned trial Judge erred in that in imposing a sentence of imprisonment he did not have regard to section 11 of the *Penalties and Sentences Act* 1985.
>
> 4. That alternatively to ground 3, the learned trial Judge erred in that he was satisfied that no other sentence than imprisonment was appropriate in all the circumstances of the case."

The goods which the applicant is alleged to have handled was a motor car, and I can take the resume of the relevant facts from the reasons for sentence given by the trial Judge, where His Honour set them out very fully. I shall not read it verbatim, but **[3]** I shall take a summary from that source.

The applicant has been for about ten or eleven years a licensed motor car trader. Since early 1988 he conducted a used car sales business at premises in Wyndham Street, Shepparton. In July last year the applicant purchased a white Holden Commodore sedan registered number DLH-605 from Shepparton Auto Wreckers for $15,000. The particulars were entered in the dealer's book which he was required to keep and the car was taken to the car yard during the afternoon of the day of purchase. It was, however, stolen from the yard some hours later. The police recovered the vehicle about two weeks later after it had apparently been in collision with an electric light pole, and the car was then returned to the applicant in damaged condition. The damage was such that the applicant sought a new body for it. Enquiries made were unsuccessful and therefore the applicant was left with a badly damaged car which he was unable to have repaired.

On the morning of 4th November, 1988, a white Holden Calais Commodore sedan registered number CZO-260 belonging to Melford Motors Pty Ltd was stolen from that company's premises in Elizabeth Street, Melbourne. That car had been purchased by Melford Motors in June last year for $25,250. It was being held for resale and was offered for purchase at $29,000. On the

same day, that is 4th November, 1988, the applicant was offered the stolen car with its engine, gear-box and **[4]** certain other parts and interior trim missing, for $7,100. It had no registration plates affixed to it. The applicant purchased it for $6,900. No entry was made in the applicant's dealer's book in respect of the purchase of that car. Indeed, he sought to disguise the nature of the purchase of the stolen Calais motor car by causing to be placed in *The Age* newspaper an advertisement for the purchase of a Holden Commodore car body, and that advertisement was published on 7th November last year. When questioned by the police the applicant falsely stated to them in effect that it was after that advertisement was published that he had been offered the stolen motor car.

On the same day, Monday November 7th, the applicant took the damaged Holden Commodore sedan registered number DLH-605 to the premises of Bill Clayton Motors, and later the same day took the stolen car to the same place. Bill Clayton Motors carried on the business of motor engine repairs. On the same day the applicant took the registration plates and the compliance plates from the damaged Holden Commodore and affixed those plates to the stolen motor car. He instructed Bill Clayton Motors to take the engine from the damaged Holden Commodore and fit it to the stolen motor car.

The defence advanced at the trial, which was supported by unsworn evidence given by the applicant, was that he was not aware that the vehicle **[5]** for which he paid $6,900 was stolen at the time when he purchased it. The applicant is thirty-eight years of age and has no prior convictions. He has an unblemished character and is of very high reputation in the community in which he lives. Many witnesses called, some at the trial and some on the plea, spoke of his reputation. He is married, has three children, and has obviously worked hard all his life. After leaving school he was apprenticed to a plumber and qualified as a plumber at the conclusion of that apprenticeship. For some years now he was worked hard in his own business and obviously achieved some success in it. Mr Bourke, who appeared for the applicant in this Court, contended that the sentence which the learned Judge imposed was manifestly excessive and sought in effect from this Court any form of non-custodial sentence. The learned Judge, in his reasons for sentence, said that in his view specific and general deterrence were important matters in a case of this kind, and that he had formed the conclusion that only a custodial sentence was appropriate. I find myself unable to say that the learned Judge was wrong in that conclusion. The handling of stolen goods is a serious offence and as the learned Judge observed, but for handlers, there would be very many fewer thefts.

[6] It is indeed tragic that a man of such good reputation should have his life ruined by one foolish act. The conviction itself will be a severe punishment to him because it seems almost inevitable that he will lose his licence as a second-hand car dealer, but a little reflection, I believe, will show that offences of this kind must attract condign punishment. They are difficult to detect and when committed by persons in respectable business situations, they are all the more difficult. A person in a position of the applicant is entrusted by the community with a licence to deal in second-hand vehicles and is licensed so that the community may be protected. I am unable to say that the learned Judge was in error in imposing a custodial sentence and as it was a very short sentence, I am unable to say that the sentence was manifestly excessive. Mr Bourke submitted that any custodial sentence was manifestly excessive for the applicant in all the circumstances of this case. It is obviously necessary for Mr Bourke to go as far as that, but I am clearly of the opinion that the sentence was not outside the range open to the learned trial Judge. It was a moderate sentence and I am quite unable to say, in the circumstances, that it was inappropriate. I would therefore dismiss the application.

[7] CROCKETT J: I agree.

NATHAN J: I agree.

YOUNG CJ: The order of the Court is that the application is dismissed.

APPEARANCES: For the Crown: Mr M Hugh-Jones, counsel. JM Buckley, Solicitor for the DPP. For the applicant Davies: Mr B Bourke, counsel. Hargrave Ambrose & Co, solicitors.