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SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v POULOPOULOS

Young CJ, Gray and Phillips JJ

31 January, 1 February 1989

CRIMINAL LAW – SENTENCING – BURGLARY – DRUG-RELATED – PRIOR CONVICTIONS FOR DISHONESTY – SLIGHT REHABILITATION AS TO DRUG ADDICTION – WHETHER DRUG-RELATED NEED A MITIGATING FACTOR IN SENTENCING – WHETHER UNSUSPENDED CUSTODIAL SENTENCE APPROPRIATE.

P. pleaded guilty to a charge of burglary (involving theft of property valued in excess of $20,000) and a charge of attempted burglary. On the plea, it was said that P. was a woman aged 27 years, committed the offences in order to obtain money for her drug addiction, had four previous convictions involving dishonesty, and had made some attempts to overcome her drug addiction. She was sentenced to 2 years' imprisonment on the first charge, 12 months' imprisonment on the second, to serve a minimum of 18 months before eligible for parole. Upon application for leave to appeal against sentence—

HELD: Application dismissed.
Having regard to the slight evidence concerning the defendant's rehabilitation, her antecedents and the severity of the offences (which were not mitigated by the fact that she needed money to obtain drugs) no error was shown in the Court's imposing an unsuspended custodial sentence.

YOUNG CJ: [1] This is an application for leave to appeal against sentence by Vicky Poulopoulos, who pleaded guilty in the County Court in November last year to two charges; one charge was a charge of burglary and the other was a charge of attempted burglary. After hearing a plea by counsel on the applicant's behalf, the learned trial Judge sentenced the applicant on the count of burglary to be imprisoned for a period of two years and on the count of attempted burglary to imprisonment for a period of twelve months, both sentences to be served concurrently by virtue of the provisions of the *Penalties and Sentences Act*, and His Honour fixed a minimum period of eighteen months to be served before eligibility for parole.

The applicant seeks leave to appeal from the sentence so imposed upon three grounds, but in the argument before us it was the last of the grounds that was chiefly **[2]** relied upon, namely, that the learned Judge gave no weight, or insufficient weight, to considerations of rehabilitation. The offence of burglary was committed on 21st December, 1985, when goods to a total value of something in excess of $20,000 were alleged to have been stolen – that is the valuation of the victim. None of the goods were recovered, except a clock which was found in the applicant's dwelling and which upon being questioned initially she denied having stolen and asserted had been in her possession for a number of years. The charge of attempted burglary was of a house in which the applicant was in the process of burgling when she was disturbed by a neighbour, and nothing was actually taken.

The applicant is a woman of twenty-seven years of age, who acknowledged some prior convictions, four, I think, altogether for theft, one previous conviction for burglary, one for receiving stolen goods and one for obtaining property by deception. For the first of those offences, which were committed in August 1978, she was sentenced to a fine of $50; for the second two offences of theft she was sentenced to a fine of $100, and then in October 1985 she was released on probation on charges of burglary, theft and receiving, as well as other charges, and very shortly after that sentence was imposed she committed the burglary with which we are now concerned. On the face of it, therefore, the record is not one that is likely to attract leniency.

The reason for the theft and for the burglary with which we are now concerned was to obtain money for drugs. **[3]** During the course of the remarks which the trial Judge made when passing sentence, His Honour said, quite correctly I think, "Members of the community have gone past the stage where they accept as an excuse for burglary that the offender has done so to obtain

money for drugs". That sentence, however, was fastened upon by counsel who appeared in this Court for the applicant – he was not counsel who appeared in the court below – as indicating that the learned Judge had misunderstood the plea that was made on the applicant's behalf.

In my view that submission cannot be accepted. A reading of the plea indicates in my view quite clearly that counsel was attempting to rely upon the fact that money was required for obtaining drugs as a mitigating factor. His Honour was quite correct, in my view, in saying that that could not be regarded as a mitigating factor. During the course of the plea it was suggested that the applicant had on a number of occasions in the past attempted to free herself from addiction to heroin, but that those attempts had previously failed. It was then suggested that the applicant had in 1986 gone to Queensland with her husband, who was in the same situation, to pursue a course of treatment which perhaps was not available in Victoria, and there was some evidence to suggest that that treatment had been undertaken and with some success. But what was said on the plea was entirely a matter of assertion by counsel, coupled with hearsay evidence from a friend and a brother of the applicant. That evidence was of the slightest, and having regard to the general experience of the difficulty which drug addicts **[4]** have in freeing themselves from their addiction, it was hardly evidence upon which the Judge could place a great deal of reliance. Coupled with the slightness of the evidence that was in fact called was the absence of evidence from the person who could, if it were true, give effective evidence of her success or otherwise in attending the course of rehabilitation and achieving a degree of freedom from the addiction.

There was also, of course, no medical evidence at all as to the state of the applicant. Notwithstanding those facts, counsel who made the plea did not hesitate to throw out as a possibility that the learned Judge might have released the applicant upon a bond under s13 of the *Alcoholics and Drug-Dependent Persons Act*. There was no evidence upon which that matter fell for consideration. In those circumstances, what His Honour did was to say, in addition to the observation that I have quoted, that the consideration that the money was required for obtaining drugs is a consideration that has very little appeal to the victims of burglary offences in particular. Then His Honour went on to say:

> "I take into account in your favour your plea of guilty to the offences. I have considered all the sentencing alternatives which are available to me, and have concluded that the only appropriate form of sentence for these offences is a sentence of imprisonment. I bear in mind all the things that have been said on your behalf by your counsel, Mr Dickinson, and all the factors that are to be weighed in the balance in the sentencing process."

In the light of those observations and the facts which I have recited, I think it is impossible to conclude that the learned trial Judge made any error. He did not, **[5]** in my view, misunderstand the plea, and even if he did, I would doubt whether misunderstanding some aspect of the plea is an error of law. But further than that, he was not obliged, in my view, to impose what is now sought, namely a non-custodial sentence or a suspended sentence. It is true that having regard to the whole of the applicant's history it is conceivable that the trial Judge, if persuaded of the attempts which we have been told the applicant has made towards rehabilitation, might have taken a different view from that in fact taken. But to say as much is not to identify any error which would justify this Court in interfering with the sentence imposed, and in the absence of any such error I think that the application must be dismissed.

GRAY J: I agree that the application must be dismissed. The unexplained failure to call the applicant, among other things, denied His Honour the opportunity to see and hear the applicant and form his own judgment about the validity of the suggested rehabilitation. This fact, coupled with the unexplained failure to proffer any medical evidence from Queensland, justified His Honour in attaching little or no weight to the suggestion of rehabilitation. Viewed objectively, the two crimes called for stern punishment, having regard to the applicant's past history and the fact that she had very recently been released on probation, and to my mind entirely justify the sentences imposed by His Honour. I detect no error in what His Honour did. Accordingly, I would also dismiss the application.

PHILLIPS J: I agree with what has been said by the other members of the Court and that the application should be dismissed.

APPEARANCES: For the Crown: Mr J Bowen, counsel. JM Buckley, Solicitor to the DPP. For the applicant Poulopoulos: Mr M Clelland, counsel. Slades Solicitors.