

03/84

SUPREME COURT OF QUEENSLAND

R v GREEN

Andrews SPJ, Sheahan and McPherson JJ

28 November 1983

CRIMINAL LAW – THEFT – SHOP STEALING – SENTENCE – WHETHER CONVICTION APPROPRIATE – MATTERS TO BE TAKEN INTO ACCOUNT WHEN SENTENCING.

ANDREWS J: The applicant in this matter was charged in the Magistrates' Court on 26 May 1983 that on 26 April 1983 at Brisbane she stole one petticoat and one card and envelope. She pleaded guilty to the charge. She was then aged 31 years and a second year Economics student at the University of Queensland. She has no previous convictions. She had held responsible positions, including that of laboratory assistant for about four years in the mining industry in Western Australia. She had also acted as an assistant for a research project by a senior lecturer in Economics at James Cook University. She has previously borne an unblemished character and on the occasion in question she was, on the material before us, depressed. She had recently undergone some surgery and had problems following the surgery. This is referred to in a statement by Dr Maria O'Sachy who was employed in the Health Service at the University of Queensland. She had indeed sought counselling prior to the commission of this offence with the director of counselling services at Queensland University.

Mr HW Thiele, who is the Director, spoke of her in a statement that was addressed to the Stipendiary Magistrate at the Magistrates' Court. He said that she had been experiencing financial difficulties which appear to follow from her having left full-time employment and made an application for support under the scheme known as T.E.A.S. which had not been, as the saying is in the report, sorted out and she had personal debts outstanding and dwindling resources. She was described as being physically run down, depressed, insecure, alone and worried about the prospects of employment when she has completed the University course. She did well in her first year of studies, but nevertheless was demonstrating concern about her problems generally. Dr O'Sachy commented upon the fact that the applicant had been to see her on 13 April 1983 and was very anxious about a number of things to which I have already referred and she described the applicant as having been depressed since the commencement of semester.

Both Dr O'Sachy and Mr Thiele were made aware of the episode in respect of which she stood convicted, and Mr Thiele described her conduct as impulsive. He said in his report, "Because of her depressed state of mind the theft of the article was carried out in an entirely artless fashion and was readily detected." Dr O'Sachy said of these things, "This seems a most unusual episode for a person of her character. I feel that stress would have contributed to her actions. She is attending counselling in management of her problems." At the time of the commission of the offence the applicant made purchases amounting to about \$50 with the use of a bankcard. The value of the items stolen is \$7.22.

All the material to which I have referred was before the Stipendiary Magistrate in the Court below. He dealt with the matter on the basis that it was a blatant theft that was committed by the applicant. It seems to me that that was simply not enough. There are circumstances in the background of this applicant which should have been to the fore in considering what was an appropriate order in dealing with the matter.

When she graduates the applicant, according to material before us, is likely to be seeking employment with the Public Service. In this State a person with a conviction is at a disadvantage in the obtaining of employment and it is apparently exceedingly difficult for them in that regard. I do not know that that is simply typical of Queensland. I believe it to be common throughout the other States, and possibly also so far as the Commonwealth Public Service is concerned but

I must confess that there is no direct information before us in that regard. The matter has in my view been inadequately dealt with in the Court below and that is enough, I think, to demonstrate that there has been a miscarriage of the sentencing discretion. It is said that we should either admit the applicant to probation, or alternatively give her the benefit of an order under s657A of the *Criminal Code* which, as it was urged upon us, would involve withholding a conviction.

I think, speaking for myself, having regard to the history of the matter and the circumstances of the applicant, notwithstanding that she is a person of intelligence and is aged 31, and notwithstanding that she previously bore an unblemished character, she shows sign of needing some form of counselling and to that end I think that an appropriate way of dealing with the matter would be, subject to her consent, to admit her to probation for a period of 12 months, subject to a special condition, apart from the usual conditions in Form B, that she avail herself for such counselling as is directed by the Chief Probation Officer. I can see no reason why this should not be through the services of the University Health Department, or alternatively the office of the Director of Counselling Services at the University. As I say then, I would admit her to probation for 12 months.

[Judgment supplied by courtesy of CSM Brisbane]
