

24/87

## SUPREME COURT OF VICTORIA — FULL COURT

**R v STRETTON**

Kaye, Gray and Nathan JJ

18 June 1987

**CRIMINAL LAW – SENTENCING – BURGLARY – GENERAL CONSIDERATIONS – ATTEMPTED BURGLARY – COMMITTED WHILST ON PRE-RELEASE PERMIT – WHETHER CUMULATIVE SENTENCE APPROPRIATE.**

**1. Members of the community have a strong distaste for the crime of burglary and for those who commit it.**

**2. Accordingly, where an accused person, with prior convictions for burglary, committed an offence of attempted burglary within three weeks after the grant of a pre-release permit, it was open to the Court to impose a sentence of nine months' imprisonment to be served cumulatively upon any uncompleted sentence.**

**KAYE J:** [1] Darryl Leslie Stretton makes application for leave to appeal against sentence. He pleaded not guilty to one charge of attempted burglary when he was presented before the County Court at Geelong and he was, after trial, found guilty. After hearing a plea and the evidence of two witnesses concerning him and his situation, the learned trial Judge, on 25th March 1987, sentenced the applicant to a term of nine months' imprisonment with an order that the term of imprisonment be served cumulatively upon any uncompleted sentence imposed on him. He now seeks leave to appeal on the ground of severity of sentence.

The circumstances in which the attempted burglary took place do not require elaboration other than to point out that on 9th December 1986, about the middle of the day or [2] early in the afternoon, the applicant attempted to gain entry into the flat premises of Michelle Marie Henderson in Westmoreland Street, Richmond. While he was endeavouring to do so, Miss Henderson heard him and pushed him away from the window or wire screen he was attempting to force open. He then had his head through the window and his right hand trying to lever himself through it. He attempted to make an escape but was prevented from doing so by neighbours placing their vehicles in his path. On the previous evening the applicant, with another person, had been present in that flat and heard Miss Henderson say that she intended on the following day going to Ballarat for a few days and that she would be leaving in the morning. The inference to be drawn from those matters is that the applicant took advantage of the fact that Miss Henderson had indicated that she would be absent from her flat when he tried to force entry. Perhaps it is just as well for him that she was still present and had not yet left when he committed this crime.

The applicant is a young man who had twenty-five previous convictions between 7th July 1984 and 13th November 1985. Those convictions arose out of four court appearances and comprise: eleven counts of burglary, one of unlawful possession, one of assisting in the retention of stolen goods, one of assault and one of possession of a drug of dependence. At the time of his sentence he was twenty-five years of age. On 13th November 1985 in the Magistrates' Court at Geelong, he was sentenced to a total term of forty-two months' imprisonment with twenty-four months being fixed as the minimum [3] period before which he would become eligible for parole. He was released, no doubt on a pre-release permit, on 13th November 1986 that is, some considerable time before his non-parole period was due to commence. It was three weeks later that he committed this crime for which he was sentenced by the learned trial Judge.

Having regard to the seriousness of the offence, his criminal record, the fact that he had committed this offence within three weeks of being given a chance to rehabilitate himself, in my opinion, it cannot possibly be said that the sentence was not within the permissible range which was open to the learned trial Judge to impose upon him. It ought to be remembered by persons who entertain thoughts of committing burglary that members of the community have a strong

distaste for the crime and for those who commit it. Personal matters, such as others who care for the convicted person, fall into insignificance when contrasted with the harm and consequences which might be occasioned to the victims of the burglary. I would, therefore, dismiss the application.

**GRAY J:** I agree.

**NATHAN J:** I agree.

**KAYE J:** Application dismissed.

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