

28/89

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v COLLIER

Young CJ, O'Bryan and Gobbo JJ

8 December 1988

CRIMINAL LAW – SENTENCING – THEFT FROM EMPLOYER – MONEY OBTAINED USED FOR GAMBLING – PLEA OF GUILTY – GOOD PROSPECTS OF REHABILITATION – NO RELEVANT PRIOR CONVICTIONS – WHETHER SENTENCE OF 3½ YEARS' IMPRISONMENT WITH MINIMUM OF 2 YEARS APPROPRIATE.

C. pleaded guilty to theft (over a 3-year period) from his employer of property valued in excess of \$60,000. The money obtained had been spent on gambling. On the plea, it was said that C. was aged 27 years, had assisted police in recovering some of the property, had obtained new employment and had no relevant prior convictions. C. was sentenced to 3½ years' imprisonment with a minimum of 2 years before eligible for parole. Upon appeal against sentence—

HELD: Appeal allowed. Sentence reduced to 3 years' imprisonment with a minimum of 1 year. The sentencing judge should have made a greater allowance for the accused's early indication of his plea of guilty and his good prospects of rehabilitation.

YOUNG CJ: [1] This is an application for leave to appeal against sentence by Terrence James Collier, who pleaded guilty in the County Court in October of this year to a charge of theft. The theft was of a large number of motor tyres belonging to the applicant's employer. The applicant was employed as a manager of Independent Tyre Services of Wilkie Street, Bendigo. He was in sole charge of the monthly stocktaking of the stock on hand, and of the number of sales and the number of tyres received from head office, and he was selling a number of those tyres and in effect falsifying the records so that he sold those tyres on his own account. The total value of the tyres so stolen amounted to over \$60,000. There were 400 tyres involved over a three year period.

When the applicant was apprehended by the police, however, he immediately acknowledged his responsibility and co-operated with the police, not only in making full [2] admissions but also in assisting the police to recover some of the tyres that had only recently been sold. The applicant is twenty-seven years of age and, save for one conviction for driving a motor car whilst having a blood alcohol content exceeding .05% per cent, he has no previous convictions.

The learned Judge heard a plea by counsel on behalf of the applicant, during the course of which the applicant's employer, since he was arrested, gave evidence and spoke highly of him. The applicant had evidently lived in the Bendigo district for most if not all of his life and was well thought of in the district. What led him into the situation in which he now finds himself was a propensity for gambling, and once he started taking money from his employer he was locked into a situation from which he could not escape. The offence must accordingly be regarded as a serious one, because the applicant was occupying a position of trust. After hearing the plea, the learned Judge sentenced the applicant to be imprisoned for a term of three and a half years and fixed a minimum term of two years to be served before he should be eligible to be released on parole. His Honour further ordered that he repay the sum of \$61,412.92 by way of compensation to his former employers. The applicant appears before us in person and seeks to have the sentence reduced on the ground of its severity for a first offender.

We have given very careful consideration to this application and come to the conclusion that the learned trial [3] Judge did underestimate the value to be placed on the applicant's plea of guilty, and particularly upon the fact that the plea of guilty was in substance made at the very outset. There was no period at all when the applicant pretended that he was other than guilty of the offence with which he was ultimately charged. That is a significant consideration.

The other factor that I think the learned Judge underestimated was the prospects of this

applicant's rehabilitation. As I have indicated already, he obtained employment after his arrest, this time as a barman, in his home town of Bendigo, and his employer who had known him for some twelve years was not only willing to give him the job but also spoke very highly of him. In those circumstances, having regard to the fact that he is a first offender for sentencing purposes, I think that the learned Judge insufficiently allowed for those prospects of rehabilitation.

Accordingly, I would grant the application and vary the sentence imposed. It is a serious offence and that must be marked by the sentence of the Court. But I think that the other considerations to which I have adverted may be reflected in a more than usually lenient minimum term. Putting those factors together, I would propose to the Court that we should vary the sentence so as to impose a term of three years' imprisonment and fix a minimum term of one year to be served before eligibility for parole.

O'BRYAN J: I agree with the order proposed.

GOBBO J: I also agree.

APPEARANCES: For the respondent Crown: Ms C Douglas, counsel. JM Buckley, Solicitor for the DPP. The applicant Collier appeared in person.
