

Hayes v Rowbottam

24 August 2004

(BR) Martin CJ, Riley J & Priestley AJ
Extempore

This was an appeal against the decision of a judge dismissing an appeal against sentence imposed by a magistrate for the crime of stealing.

At all relevant times the offender was a juvenile. The chronology of events before the magistrate disclosed that:

- On 28 November 2002 the offender completed a diversion for the offence of stealing.
- Three and a half months later (on 13 March 2003) the appellant committed the offence of receiving a bicycle valued between \$1,500 and \$2,000 which he tried to sell to Cash Converters. On that same day he was taken into police custody and, when interviewed, admitted the offence.
- Six weeks after having committed the offence of receiving, the appellant committed the offence of stealing which was the subject of the appeal. On this occasion, he stole a lap top computer from a computer store. The computer was never recovered.

The offender was dealt with by the Juvenile Court on the one day for the offences of receiving and stealing. He had no prior convictions. He pleaded guilty to both offences. The appellant was aged 17½ years at the time of the offences and 17 years and 11 months at the time of sentence.

The appellant was ordered to perform 40 hours unpaid community work for the offence of receiving. For the offence of stealing, the appellant was sentenced to imprisonment for one month which was suspended forthwith upon the appellant entering into a bond in his own recognizance to be of good behaviour for a period of 15 months.

The sole question for determination by the Supreme Court and by the Court of Appeal was whether a fully suspended sentence of one month's imprisonment was manifestly excessive for one count of stealing a lap top computer.

In the Supreme Court, Bailey J found that the fully suspended sentence provided the appellant with *"a very real incentive to rehabilitate"* and *"that the sentence (was) one very much aimed at the appellant's rehabilitation"*. His Honour rejected the proposition that the sentence was manifestly excessive and expressed the view that the sentence was manifestly appropriate in the case of this particular appellant.

The Court of Appeal unanimously dismissed the appeal holding that the sentence of imprisonment although severe, was not manifestly excessive. Viewed objectively the offence was serious and the appellant was not entitled to be treated as a person of prior good character. Bearing in mind his lack of cooperation with the police and the fact that the appellant was caught at the scene, his plea of guilty was not demonstrative of any remorse. The respondent was not called upon to make any submissions.