

11, 1996 he broke and entered the Future Stop Store situate at 484 Grand Lake Road in the County of Cape Breton and therein committed the indictable offence of theft contrary to s. 348(1)(b) of the **Criminal Code**.

He initially pled not guilty, but on January 24, 1996, before a judge of the Provincial Court, his then counsel informed the trial judge that the plea was to be changed to guilty. In answer to a question by the trial judge as to whether he wished to change his plea, he responded in the affirmative.

Although he appeared with counsel at trial, before this Court, he appeared on his own behalf.

His grounds of appeal are:

This is my first conviction under section 348(1)(b) C.C. I pleaded guilty as I was with Mr. Simon Fitzgerald when the offence occurred. I also did not want to put the courts through a lengthy and costly trial. When Mr. Fitzgerald picked me up that evening I was not aware of his intentions, even after we began walking. I now wish to draw the Court's attention to the fact I have very limited eyesight, in fact I have been diagnosed as being legally blind. Due to my blindness there is no possible way I could have assisted Mr. Fitzgerald in committing the offence and for this reason alone I feel the 22 month sentence was too severe. I trust you will consider my appeal on the above grounds.

This is an appeal from the sentence of 22 months imposed by the trial judge.

Unfortunately the pre-sentence report is far from positive. In addition, the appellant, aged 40, has fourteen prior convictions, many of them theft related. He has a marked problem with drugs and in particular alcohol. He was under the influence of alcohol when the offence was committed. His co-accused, with a lengthier record, received a sentence of three years. The appellant was on remand for approximately two months and on probation at the time of this

charge. The Crown at sentencing recommended a sentence "in the range of two years", while appellant's counsel asserted a sentence "in the range of a year or under". Much the same submissions by counsel at sentencing were placed before us.

After reading all of the material placed before us and hearing the appellant it is our unanimous opinion that the appeal is dismissed. The sentence is within the acceptable range of sentences for like offences, taking into consideration the circumstances of both the offences and this offender. It is not manifestly excessive, clearly unreasonable or demonstrably unfit.

Matthews, J.A.

Concurred in:

Clarke, C.J.N.S.

Hart, J.A.

