PARTIES:	DUNCAN CAMPBELL McKAY v GILLIAN RUTH HAYWARD
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	No. JA 24 of 1995
DELIVERED:	Darwin 15 December 1995
HEARING DATES:	3 November 1995
JUDGMENT OF:	Kearney J

CATCHWORDS:

APPEAL AND NEW TRIAL - Appeal - General principles - In general and right of appeal - Criminal law - Sentence - Appeal against Appeal and new trial - Criminal law - Appeal against sentence.

Salmon v Chute (1994) 94 NTR 1, followed.
Goddard v Bell (SC (NT) - Kearney J - 8 March 1994), followed.

CRIMINAL LAW - Jurisdiction, practice and procedure - Judgment and punishment - Sentencing - Objective facts of offence - Need for reasonable proportionality between sentence and circumstances of offence - Due weight must be given to objective circumstances

R v Dodd (1991) 57 A Crim R 349, followed.

CRIMINAL LAW - Jurisdiction, practice and procedure - Judgment and punishment - Sentencing - Motor vehicle offences - Unlawful use of motor vehicle - Appeal against sentence - Relevant considerations

Quirk v Pittorino (1990) 99 FLR 142, referred to.
Hatch v Trenerry (SC (NT) - Kearney J - 25 September 1989), referred to.

CRIMINAL LAW - General matters - Other general matters - Sentencing - Significance of maximum penalty available on summary conviction for offence triable on indictment

Maynard v O'Brien (1991) 57 A Crim R 1, followed.

CRIMINAL LAW - Appeal and new trial and inquiry after conviction - Appeal and new trial - Against sentence - Whether sentence "manifestly excessive" - Desirability of providing relevant statistical information

Marshall v Llewellyn (SC (NT) - Kearney J - 3 May 1995), followed.
Gadatjiya v Lethbridge (1992) 106 FLR 265, followed.
Nabanardi v Minner (1992) 107 FLR 172, followed.

CRIMINAL LAW - Jurisdiction, practice and procedure - Judgment and punishment - Sentencing - Factors to be taken into account - Hardship to offender's family - Whether a factor to be taken into account in mitigation of punishment - Need to produce cogent evidence to establish exceptional hardship

R v Nagas (CCA (NT) - 13 October 1995), applied.
Manson v Nayda (SC (NT) - Kearney J - 31 October 1995), followed.

CRIMINAL LAW - General matters - Other general matters - Magistrates - Remarks on sentence - Whether appellate Court may assume that Magistrate has considered all matters put to him

Janima v Edgington (SC (NT) - Mildren J - 28 August 1995), followed.
R v Reiner (1974) 8 SASR 102, referred to.
R v Davey (1980) 50 FLR 57, referred to.

REPRESENTATION:

Counsel:

Appellant:	S.J. Cox
Respondent:	C. B. Cato

Solicitors:

Appellant:	Northern Territory Legal Aid Commission
Respondent:	Office of the Director of Public Prosecutions

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. JA 24 of 1995

IN THE MATTER of the Justices Act

AND IN THE MATTER of an appeal against sentences imposed by the Court of Summary Jurisdiction at Darwin

BETWEEN:

DUNCAN CAMPBELL McKAY
Appellant

AND:

GILLIAN RUTH HAYWARD
Respondent

CORAM: KEARNEY J

REASONS FOR JUDGMENT

(Delivered 15 December 1995)

The appeal

On 21 July 1995 the appellant appealed, pursuant to s163(1)(a) of the Justices Act, against the severity of a sentence imposed on him by the Court of Summary Jurisdiction at Darwin ("the Court"), after he was summarily convicted on two counts of the unlawful use of a motor vehicle, contrary to s218(1) and (2)(e) of the Criminal Code. The offences carry a maximum punishment of 7 years imprisonment, on each count. On summary conviction, as here, the maximum is 2 years imprisonment; that is not

however the punishment reserved for the 'worst' category of cases to come before the Court - see *Maynard v O'Brien* (1991) 57 A. Crim. R 1 at p6. The Court sentenced the appellant to 6 months imprisonment on each count, ordered that the sentences be served concurrently, and directed pursuant to s5(1)(b) of the Criminal Law (Conditional Release of Offenders) Act that he be released after serving one month in prison, upon entering into a bond to be of good behaviour for 12 months.

Following amendment, two grounds of appeal are relied on, viz:

(1) The Court gave insufficient weight to the circumstances personal to the appellant.

(2) The Court erred in exercising its discretion, by imposing a sentence of immediate custodial imprisonment.

Mr Cato of counsel for the respondent rightly did not object to the amendments: see *Kooba Pty Ltd v Hughes* (1986) 22 A Crim. R 241 at pp244-245 and *Wanambi v Thompson* (SC (NT) - Kearney J - 29 July 1994) at pp2-8. I consider that ground (2) of the appeal implicitly raises the issue of the sentencing being manifestly excessive, though Ms Cox asserted that it did not; see her submission at pp8-9, *R v Raggett, Douglas & Miller* (1990) 50 A Crim R 41 and the authorities there cited, and *Salmon v Chute* (1994) 94 NTR 1 at p24.

The proceedings in the Court

(a) *The admitted facts of the offence*

The appellant pleaded guilty, inter alia, to 2 counts of unlawful use of a motor vehicle, and through his then counsel, Ms Morris, admitted that the following facts were correct:

> "... at about 1.30 am on Tuesday, 30 May 1995, the defendant [here the appellant] was residing at San Matteo Caravan Park at the 8 Mile Plains out of Brisbane. A co-offender by the name of Evan Zimack arrived at the caravan park in a stolen vehicle, being a 1981 Ford Falcon station wagon, [registration] 716PNU. The value of the vehicle was $3,500.
>
> The defendant had been expecting Zimack and the stolen vehicle, as they discussed the matter some time before. While Zimack went out to locate another car to steal the defendant loaded his personal property into this vehicle and prepared to leave the caravan park. A short time later Zimack returned with a 1983 Ford Falcon sedan, [registration] 001BJE ,which he had stolen nearby. Zimack and the defendant, with their families, then departed in convoy for the Northern Territory.
>
> At about 5pm on Friday, 2 June 1995 the defendant and Zimack and their families drove into Darwin in the stolen vehicles and took up residence in Alawa with the defendant's parents. The defendant had driven both vehicles at different times during the trip from Brisbane and was well aware that they were stolen.
>
> The sedan ... was the property of Stuart Neville White ... valued at $3,500. No permission was given to the defendant or Zimack to use the vehicle. That vehicle was stolen from ... the victim's residence. The... station wagon was the property of Jennifer Anne Boylitz ... she hadn't given permission for anyone to use her vehicle, [which] was stolen from the front of her residence.
>
> Both vehicles were recovered on 5 June 1995 in Darwin, intact, undamaged.
>
> At the time of the offence the defendant was not the holder of a driver’s licence in the Northern Territory or anywhere else in Australia.
>
> On the morning of Tuesday, 6 June 1995, the defendant took part in a taped record of interview at the Berrimah Police Station. He made full admissions to the offences stating that he used the vehicle solely to get to Darwin to visit his father who was dying."

The prosecutor informed the Court that the appellant's co-offender had not yet been dealt with by a Court for his part in the offences. The prosecutor also informed the Court that the appellant had prior convictions for traffic offences.

(b) *The submissions in mitigation*

In mitigation, Ms Morris canvassed the nature of the offences and the appellant's circumstances, viz:

> "... *this is a fairly common offence that comes before the court ... of people stealing cars in other States and driving them to get here, however, this offence was committed in fairly unusual and quite sad circumstances*. My client became aware that his father was very ill; he'd known that he'd been ill for some time, but a recent medical opinion was that he [then] had some 12 or 18 months to live. However my client received a phone call from his mother, who is a resident of Darwin, and she stated that his father's condition had gone downhill, and there was a note of panic in her voice; and my client said that he realised that his father was very ill.
>
> He was over in Queensland with a de facto wife and a very young child, who's now 8 months. He's been unemployed for some period of time, for about 6 months. He'd been working casually, declaring that work, doing a little bit of security work in Fortitude Valley in Queensland, but he certainly did not have the finances to get to Darwin.
>
> He went to Social Security, he went to the Smith Family, he tried all other agencies in order to get some help, but they were not able to assist him. *So this illegal plan was hatched because my client realised that in order to see his father he had to get to Darwin, and this was the only option he felt [was] left open to him*.
>
> He does come before the court contrite, sir, because he is unhappy and upset that he had to resort to illegal behaviour in order to see his father. However, I can offer no remorse at having come to Darwin because in fact my client's father did die the next day after my client was released from custody in relation to these matters.
>
> They arrived in Darwin ... around 2 June. My client was arrested on 5 June and brought to court on 6 June. He was kept in custody overnight from the 5th to the 6th and then he was also kept in custody overnight from the 6th to the 7th pending a bail application, as the magistrate required some further evidence that my client's father indeed was incapacitated; and my client was finally released from custody on the afternoon of 7 June. He instructs me he went home, he had a shower and he went to the hospital and sat with his father, and his father died the next day.

> ... my client is from the Territory originally and had a business up here called 'Lagging & Insulation'. He had that business here before he left ... [he] started that business, worked it up for about 18 months, and then sold it.
>
> He did all his schooling up here and he went to Queensland about 2½ years ago. He's 33. And given the stresses of the recent loss and coming over to the Northern Territory, unfortunately his relationship with his de facto has broken up. *She's still in Darwin at the moment although [she] is considering moving to Melbourne. However their 8-month-old child is in the care of my client, and will continue to be in the care of my client. He instructs me that there is no argument about that and that is something that the mother of the child is quite happy about; and so he is the main care-giver for that child*.
>
> After his father passed away my client made all the necessary arrangements. He does have a brother up here, who is also a sole parent with 2 children. And my client instructs me that his brother was extremely upset about his father's death and could not make those arrangements, as could not his mother; they'd been together 35 years. So my client had to make all those arrangements and that part of the business is all finished now. However, he does intend to stay in the Northern Territory.
>
> ... as I said, *my client's motivation for committing [these offences] ... was in relation to seeing his father*, whom he was extremely proud of. His father had been in the Northern Territory for a very long period of time. [He] was a crocodile/buffalo shooter, tour operator working on the Katherine Gorge, a building inspector after Cyclone Tracy, and had then worked in hardware at Bunnings for years. So he was a Northern Territory character. And my client ... really wished to see him before he passed away. *In the end he was able to do that, but only as a result of this desperate attempt to get to the Territory with his small family"*
> *(*emphasis mine*)*

Ms Morris then referred to another matter not relevant for the purposes of this appeal and continued:-

> *"Sir, he is pleading guilty in relation to ... these offences and I would ask you to take that into account and submit that it would be appropriate that he be placed on a bond, considering the particular circumstances*.
>
> [THE COURT]: What's his financial circumstances?
>
> MS MORRIS: *Well, sir, he's the sole parent of his 8 month old child so he's not working at the moment. ...He instructs me he's on the sole parents benefit but he's also looking, through a friend, who's arriving in a couple of weeks, for some casual work in relation to a boat*.

[THE COURT]: Well, what about the cost of getting these cars back [to their owners], who's going to pay for that?

MS MORRIS: ... that would of course be something that Mr McKay and the co-offender in this matter should have the responsibility for. I'm uncertain whether any arrangements have been made for the return of those cars.

[THE COURT]: It would probably cost about - over $500 to put them on the back of a truck and send them down, wouldn't it?

MS MORRIS: Yes, sir.

[THE COURT]: I take it the cars are in the police possession.

THE PROSECUTOR: Sir, they were, I'm not sure of their present whereabouts, whether they've gone back or not.

[THE COURT]: Can you get some information about that? You're saying there was no damage to these vehicles?

THE PROSECUTOR: That's correct, sir, yes."

(emphasis mine)

Prior to adjourning for consideration until 2 pm the same day, the Court indicated that it was contemplating imposing a term of imprisonment and that a little time was required to consider various matters.

(c) *The Court's remarks on sentence*

On resuming, the Court proceeded to sentence the appellant, viz:

"... *The 'unlawful use of motor vehicle' offences are such that, in my view, a term of imprisonment is appropriate. There's a question of whether I suspend that term or not, and I'm asked to do so because of the circumstances under which these cars were stolen*. That is, that Mr McKay's father was dying and he had no way of getting to Darwin, so he and an accomplice planned, stole cars and drove them to Darwin. He arrived here and shortly afterwards his father did die. *Of course those circumstances do invoke a deal of sympathy from any person*.

I am told that he exhausted all means of obtaining some funds to get up here. I'm not sure of his father's and mother's circumstances but I think it costs about $500 one way. It must have cost him at least some sort of money to

pay for petrol to get up here - there were two cars - to bring his de facto wife and son.

He has got no prior convictions and clearly the prospects of rehabilitation are good. And that's a significant mitigating circumstance, that he hasn't been in trouble before and that is - well I don't [know] too much about what his plans for the future are but ...

MS MORRIS: Sir, there is a list of priors on the file. I should probably correct your ...

HIS WORSHIP: *Well when I'm talking about his 'priors', I meant there are none of similar type or ones which, at any rate, of relevance to these offences. His priors are traffic offences.*

On both counts ...he is convicted and sentenced to six months imprisonment, the maximum being two years. I direct that he be released after serving one month upon his entering into a $500 own recognisance good behaviour bond for 12 months.

That's the best I can do. *I simply don't accept that this sort of planned and pre-meditated theft of motor vehicles - two of them, not just one - because of an impending family death, is sufficient for this sort of behaviour. I do accept that it motivates people but I believe that there are alternatives.*

...

(emphasis mine)

The submissions on appeal

(a) *The submissions by the appellant*

Ms Cox dealt with the grounds of appeal together. For convenience I will deal with the submissions in the same manner.

Ms Cox relied on the well-known passages by the High Court in *Cranssen v The King* (1936) 55 CLR 509 at 519-520 and *House v The King* (1936) 55 CLR 499 at p505. She submitted that the Court had erred in that it had acted on a wrong principle or had wrongly assessed some salient feature of the evidence before it, and that this error was disclosed in what it said in the proceedings. Alternatively, she submitted that the sentence itself afforded

convincing evidence that in some way the exercise of the sentencing discretion had been unsound. See also *Salmon v Chute* (1994) 94 NTR 1 at p24.

Ms Cox conceded at the outset that the imposition of a head sentence of 6 months imprisonment on each count was within the proper exercise of the Court's sentencing discretion. The complaint was that service of the sentences imposed had not been ordered to be fully suspended.

Ms Cox referred to the following factors in favour of the appellant:

(1) He was under enormous personal stress at the time he committed the offences.

(2) He had a prior good character. He had no relevant prior convictions. The present offences were out of character for him.

(3) No damage was caused to the vehicles.

(4) He had co-operated fully with the Police.

(5) He had pleaded guilty at the first opportunity he had to do so.

(6) He is the main caregiver to his 8-month-old child. He is receiving the sole parent benefit and does some casual work.

Ms Cox submitted that these 6 factors, in particular no.(1), made this an "unusual case", requiring no measure of specific deterrence in the sentencing. She rightly acknowledged that the Court took the 6 factors into account, though it had not specifically mentioned factor (6); see *Janima v Edgington* (SC (NT) - 28 August 1995) at p5 and *R v Reiner* (1974) 8 SASR 102 at p106. However, she submitted, the Court had not given sufficient weight to each of those matters.

As noted earlier, Ms Cox submitted alternatively that the fact that the sentence had not been fully suspended in light of the subjective factors of the appellant, itself manifested error in the sentencing process.

(b) *The submissions by the respondent*

Mr Cato similarly dealt with the grounds together.

In essence, he submitted that the Court had taken all the subjective factors of the appellant into account, and had given them sufficient weight when exercising its sentencing discretion. In support, he relied on a fair reading of the Court's sentencing remarks (see p7).

He submitted that the Court was entitled to give due weight to the objective circumstances of the commission of the offences, in particular the degree of criminality and the fact that two motor vehicles were involved. See generally *Dodd* (1991) 57 A Crim R 349 at p354.

In support, Mr Cato referred to *Quirk v Pittorino* (1990) 99 FLR 142, an appeal involving the unlawful use of a motor vehicle. Angel J held there that it did not follow that to cause no damage was necessarily a mitigating circumstance; as to the period of use, the relevant inquiry was as to the length of use in the Territory, but the period of use was not an 'objective' factor to be taken into account in every case. His Honour allowed the appeal, on the basis that in the circumstances of the offence and of the offender the sentence of 12 months imprisonment, with release after 6 months, was beyond the "tariff"; he substituted a sentence of 9 months, with release after serving 3 months. Mr Cato also referred to *Hatch v Trenerry* (SC (NT) - 25 September 1989). That appeal also involved unlawful use of a

motor vehicle, for which a sentence of 12 months imprisonment had been imposed, with a non-parole period of 6 months. The appellant had used the vehicle in the Territory for some 3½ weeks, though he had had it for some 8 months and driven over 30,000 kilometres with it. The appeal against severity of sentence was dismissed.

(c) *The appellant, in reply*

Ms Cox submitted that *Quirk v Pittorino* (supra) was distinguishable; there the appellant had a relevant prior criminal history. Ms Cox also stressed her submission that the Court had not given sufficient weight to factor (6) on p9.

Conclusions on the grounds of appeal

The general principle applicable to appeals against sentence are well-known; they are set out in the authorities cited in *Salmon v Chute* (supra) at p24 and *Goddard v Bell* (SC (NT) - 8 March 1994) at p13. To succeed, an appellant must show that the exercise of the Court's sentencing discretion has miscarried.

(a) *Ground (1) - insufficient weight to appellant's personal circumstances*

The task of a sentencing Court is to assess first the objective seriousness of the offence and then the subjective circumstances of the offender. This has to be done in order "to make the punishment fit the crime, and the circumstances of the offender, as nearly as may be", as Napier CJ put it in *Webb v O'Sullivan* [1952] SASR 65 at p66. In making this assessment the sentencing Court should bear in mind the observations of the Court of Criminal Appeal (NSW) in *Dodd* (supra) at p354:

> "As Jordan CJ pointed out in *Geddes* [(1936) 36 SR (NSW) 554] at 556, making due allowance for all relevant considerations, *there ought to be a reasonable proportionality between a sentence and the circumstances of the crime, and we consider that it is always important in*

> *seeking to determine the sentence appropriate to a particular crime to have regard to the gravity of the offence viewed objectively, for without this assessment the other factors requiring consideration in order to arrive at the proper sentence to be imposed cannot properly be given their place.* Each crime, as *Veen (No 2)* (1988) 164 CLR 465 at 472; 33 A Crim R 230 at 234 stresses, has its own objective gravity meriting at the most a sentence proportionate to that gravity, the maximum sentence fixed by the legislature defining the limits of sentence for cases in the most grave category. The relative importance of the objective facts and subjective features of a case will vary: see, for example, the passage from the judgment of Street CJ in *Todd* [1982] 2 NSWLR 517 quoted in *Mill* (1988) 166 CLR 59 at 64; 36 A Crim R 468. Even so, there is sometimes a risk that attention to persuasive subjective considerations may cause inadequate weight to be given to the objective circumstances of the case: *Rushby* [1977] 1 NSWLR 594." (emphasis mine)

An appellate court is entitled to assume that a magistrate has considered all the matters which are necessarily implicit in any conclusions which he may have reached; see *Janima v Edgington* (supra) at p5, *R v Reiner* (supra) at p106, and *R v Davey* (1980) 50 FLR 57 at 65-66. A fair reading of the Court's sentencing remarks (at p7) discloses that the Court bore those observations in mind and also took into account and gave due weight to the six factors listed at p9.

As to factor (6) I add some observations. One of the issues it raises has recently been dealt with by the Court of Criminal Appeal (NT) in *R v Nagas* (CCA (NT) - 13 October 1995). In *Mawson v Nayda* (SC (NT) - 31 October 1995) at pp11-13, I said:

> "... it is clearly a negative effect of imprisonment that it affects the personal lives of the members of the prisoner's immediate family. In *R v Nagas* (CCA (NT) - 13 October 1995) at pp17-19, their Honours said:
>
> > "It has been stated on many occasions that the *hardship caused to the offender's wife and children* is not normally a circumstance which the sentencer may take into account, but the policy appears to be subject to three recognisable exceptions. Family hardship may be a ground for mitigation of the sentence where *the particular circumstances of the family are such that the degree of hardship is exceptional and considerably more severe than the*

> *deprivation suffered by a family in normal circumstances by a result of imprisonment.*
> ...
>
> The third situation in which family hardship may mitigate a sentence is where ... *other family circumstances mean that the imprisonment of one parent effectively deprives the children of parental care.*" (emphasis mine)

This approach was sought to be rationalized in *R v Wirth* (1976) 14 SASR 291 at p294; Bray CJ said that the general principle is that if imprisonment bears with special hardship on a prisoner - and it may do so because of its effect on his family - that fact may be taken into account in mitigation.

To establish one of the exceptions set out in Nagas (supra) it is necessary in my opinion that a defendant produce cogent evidence to the sentencing Court to establish that his imprisonment would impose exceptional hardship upon his family, one which is considerably more severe than normal for a family where the father is imprisoned; or that his imprisonment would effectively deprive his children of parental care.

...

I note that his Worship did not expressly allude to this submission in his sentencing remarks. In that connection, as with the fact that his Worship did not mention that the appellant had not been sentenced to imprisonment before, I bear in mind Mildren J's observations in *Janima v Edgington* (SC (NT) - 28 August 1995) at p5:-

> "His Worship's remarks in sentencing were very brief. As stated by Muirhead J in *Hill v Arnold* (1976) 9 ALR 350 at 357, this court is appreciative of the difficulties and pressures under which Magistrates are working, but it is important that they give at least a succinct account of their main reasons for decisions, especially when sentencing a person to prison.
>
> Nevertheless, remarks on sentence are not to be analysed as critically as the words in a considered reserved judgment: see *Jambajimba v Dredge* (1985) 33 NTR 19, at 22 per Muirhead ACJ; and *an appellate court is entitled, when considering the evidence and the reasons given, to assume that the Magistrate has considered all matters which are necessarily implicit in any conclusions which he had reached:* see *Bartusevics v Fisher* (1973) 8 SASR 601 per Bright J." (emphasis mine)

See also *R v Reiner* (1974) 8 SASR 102 at p106 per Bray C.J. and *R v Davey* (1980) 50 FLR 57 at 65-6 per Muirhead J."

Those observations apply with equal force in this case. No adequate evidence was adduced before the Court in support of factor (6); Ms Morris submitted that the appellant had sole parental care of a 8-month-old child and would continue to be the main care-giver in the future. Accepting that, it does not go far enough to establish that there were "particular circumstances of the family" which demonstrated that an "exceptional" degree of hardship would flow from the appellant's imprisonment, or that it would effectively deprive the child of parental care. The evidence was that the mother was still living in Darwin and there was no evidence to suggest that she was incapable of providing parental care to the child.

For these reasons ground (1) of the appeal fails.

(b) *Ground (2) - error in imposing sentence involving immediate custodial imprisonment*

Since Ms Cox conceded that the Court took into account all the relevant subjective factors, her alternative submission that the sentence itself in all the circumstances indicated that a manifest error had occurred, is tantamount to an argument that the sentence was manifestly excessive in requiring that part of the term imposed be served in prison. Ms Cox submits that service of the sentence, in the circumstances of this case, should have been fully suspended.

To establish that the sentence was manifestly excessive in this regard, it would have been desirable to provide this Court with sufficient relevant statistical information, if available, to show that the requirement that 1 month be served in prison, resulted in a sentence which was manifestly excessive. See generally *Marshall v Llewellyn* (SC (NT) - 3 May 1995) at p16, *Gadatjiya v Lethbridge* (1992) 166 FLR 265 at pp272-273 and *Nabanardi v Minner* (1992) 107 FLR 172 at pp179-180. No such information was placed before his Worship or this

Court, notwithstanding Ms Morris' concession before the Court that the offence of unlawful use of a motor vehicle was a "fairly common offence" in the Territory; Ms Cox did not seek to resile from that.

The sentencing remarks of the Court at p7 indicate that it placed considerable weight on the need for general deterrence. However it also took into account the appellant's subjective circumstances "which do invoke a deal of sympathy". I do not consider that it has been shown that the requirement that the appellant serve one month of the sentence in prison itself discloses sentencing error. For these reasons ground (2) of the appeal fails.

Orders

Neither of the grounds of appeal are allowed. The appeal against sentence is dismissed. The sentences of 6 months imprisonment on each count, the order that they be served concurrently, and the order that the appellant be released after serving one month in prison upon entering into his recognizance in the sum of $500 to be of good behaviour for a period of 12 months, are affirmed.

Orders accordingly.
