

IN THE COURT OF APPEAL OF NEW ZEALAND

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THE QUEEN v BRIAN MURRAY WILLIAMS

Coram: North P.  
Turner J.  
Haslam J.

Hearing: 22 July 1970

Counsel: Donovan for Appellant  
Neazor for Crown

Judgment: 22 July 1970

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ORAL JUDGMENT OF THE COURT DELIVERED BY NORTH P.

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This is an appeal against a sentence of five years' imprisonment imposed by Hardie Boys J. in the Supreme Court at Auckland on a plea of guilty in respect of two counts in an indictment, namely, that with intent to cause grievous bodily harm the appellant did wound the two persons named in the indictment. The appellant was also charged with attempted murder and he pleaded not guilty and was acquitted.

Now this is a type of case which fortunately very seldom happens in New Zealand. The appellant, after a quarrel in the city, drove in a car to his home, accompanied by two associates, for the purpose of obtaining a rifle. The three of them then set out in the car to find the persons with whom the quarrel had arisen. When they were found, the appellant deliberately aimed at and shot two of them, one in the abdomen and the other in the buttock.

Mr Donovan, who undertook the task of arguing the appeal as assigned counsel, said what he could for the appellant and urged upon us - quite rightly - that in view of the lenient sentences imposed by Hardie Boys J. on the other two who were involved but who did not do the shooting, this sentence of five years' imprisonment was excessive. The

one thing we do not recall counsel mentioning is that in respect of these other two persons the jury found them guilty "with the strongest possible recommendation for mercy". Now that was not just a recommendation for mercy but the strongest possible recommendation. This makes it plain that the jury regarded these two as being foolishly involved in this enterprise but by no means as deeply involved as the appellant who did the shooting. That factor itself no doubt caused the Judge to consider very seriously what ought to be done in order to meet the views of the jury for it is always the duty of a Judge, so far as he can, to pay heed to the views of the jury on questions of punishment. In these circumstances, we do not think we can consider Mr Donovan's submission that the disparity between the sentences requires us to take a more lenient view of the case of the appellant.

That being out of the way, in our opinion the sentence of five years' imprisonment for these two offences was a lenient one. It had better be known that so far as this Court is concerned, it is not going to listen to pleas in mitigation of sentences in cases where weapons are used unless the sentence is manifestly excessive.

In our opinion this sentence cannot be regarded as excessive and the appeal accordingly is dismissed.

Solicitors for Appellant:

Rainey Collins Armour & Boock, WELLINGTON.

Solicitors for Respondent:

Crown Law Office, WELLINGTON.