IN THE COURT OF APPEAL OF NEW ZEALAND

C A 97/81

THE QUEEN

v

KENNETH ROY BUCKINGHAM

Coram:	McMullin J (presiding) Somers J Barker J
Hearing:	9 September 1981
Counsel:	W R Flaus for Crown R L Maclaren for Applicant
Judgment:	9 September 1981

ORAL JUDGMENT OF THE COURT DELIVERED BY McMULLIN J

Kenneth Roy Buckingham was found guilty in the High Court on a charge of attempted murder. On that charge he was sentenced to three and a half years imprisonment. Before sentence applicant had already spent about five months in custody or at a psychiatric institution. He now seeks leave to appeal against the sentence. It is accepted by Mr Maclaren that a sentence of imprisonment was inevitable but it is said that the sentence imposed was manifestly excessive in the circumstances of the case.

The evidence adduced at applicant's trial in the High Court revealed the following material which is relevant to the application now before the Court. Applicant now aged 45 had been living apart from his wife for some two or three years. He formed a relationship with complainant about three and a half years ago and for a time lived with her and

shooting expedition the next day, he borrowed a double-barrel shotgun and some cartridges. He drove back to the property where the party was being held, stopped his car and loaded the gun with two cartridges; then he went on to the property and stood there in the dark. This was between 12.30 pm and 1.00 am. After applicant's first visit to the property complainant, who was made aware of it, became frightened and went to lay down in a nearby bedroom. While she was there the man she had been kissing in the kitchen came in. He kissed her several times while she was in the bedroom. While in the bedroom complainant heard a knock on the window; she reported this to the others in the house and it was investigated. Applicant was seen to be outside with a gun. Complainant then went to move from the bedroom to the lounge and had reached the lounge doorway when she was shot in the back by applicant from outside the house. As a result she had to be admitted to hospital where she remained as an inpatient for ten days. There was medical evidence that 23 shotgun pellets had entered her body. As a result she had penetrating wounds to the right upper thorax and chest, some of the pellets had penetrated the chest cavity; several had broken her shoulder bone and two had penetrated the muscle and lodged behind the aorta and liver in the upper abdomen.

Having discharged the gun applicant left the property and was observed to drive away from the property at a high

wanted to give her a big fright. "That is all I wanted to do" he repeated "give her a real fright".

Mr Maclaren told us that the defence advanced at the trial was not drunkenness but that there was sufficient material for the jury to find that in view of applicant's intoxication combined with the taking of valium applicant did not have the required intent to murder complainant or to do her an injury of the kind which was the basis of the lesser and alternative charges in the indictment in respect of which, following upon the verdict of guilty of attempted murder, no further verdict was required, but he hoped that if there were to be an adverse verdict it would be on one of the lesser charges. It is at once apparent from the verdict that the jury rejected applicant's evidence that he did not wish to harm complainant, merely to give her a fright. The verdict of attempted murder is consistent with a finding that he meant to cause complainant's death and rules out the possibility that applicant may have discharged the gun for any lesser purpose. But the matter of his intake of liquor and the taking of valium was relevant not only as a defence to the charge, (and for this it was rejected) but also to the sentence which was subsequently imposed upon him. The evidence was that he had been taking valium and he had taken a tablet that day; he had also taken alcohol. A blood test taken at 7.25 am on 7 February following the shooting

had not taken liquor, that he was not just a person who had been affected by drink, but was medically diagnosed as an alcoholic and to a certain extent was not able to discipline himself once he took liquor. But he thought that the punishment imposed must reflect the serious nature of the crime which was one of setting out deliberately to kill.

We recognise that what applicant did was done by him when in a somewhat emotional and intoxicated state and we do not overlook those matters which have been advanced to his credit, including his capacity for hard work and his clean record. To these the Judge himself had regard. But we cannot overlook, nor could the Judge, that what applicant did was to fire a gun at complainant with a view to depriving her of her life and that he did not do so was fortunate both for her and for him. Had he succeeded in his intentions he would have faced a charge of murder. Moreover, there was some degree of preparation by applicant before he shot complainant. He went to his son's house, got a gun and loaded it and having returned to the scene he waited for the opportunity to fire it, and having discharged it, he made off. Therefore, notwithstanding all that Mr Maclaren has placed before us on applicant's behalf, we cannot say that the sentence imposed by the trial Judge was manifestly excessive.

The application for leave to appeal is accordingly dismissed.