

Seaton v - vnd - vnd

THE QUEEN

-v-

JAMES MANE WALKER

/rme

Coram McMullin J (Presiding)
Casey J
Bisson J

Hearing 15 October 1987

Counsel C.D. Eason for appellant
J H C Larsen for Crown

Judgment 15 October 1987

(ORAL) JUDGMENT OF THE COURT DELIVERED BY McMULLIN J

James Mane Walker, aged 33, seeks leave to appeal against a conviction and sentence of 4 years' imprisonment imposed upon him in the High Court on five charges of which he had been found guilty by a jury.

On one charge of wounding with intent to injure he was sentenced to 4 years' imprisonment; on another charge that with intent to do grievous bodily harm he did wound, he was sentenced to 4 years' imprisonment. On each of two charges of aggravated burglary he was sentenced to 2 years' imprisonment. On a fifth charge of injuring with intent he was sentenced to one year's imprisonment. All the sentences were directed to be served concurrently.

The application has been put by Mr Eason for the applicant on the basis that, while he recognises that in the

circumstances of the case a sentence of imprisonment was inevitable, the applicant submits that the sentences of four years' imprisonment were manifestly excessive.

All five charges arise from events which occurred on 30 March 1987. Until 22 March Walker had been living with a girl by the name of McFarlane but on that day she left him. On the evening of 30 March, having seen a card which had been written by McFarlane to another man named Waaka, Walker took a knife with the stated intention of injuring the genitals of Michael Waaka. In a bach at the back of a house he saw Michael Waaka in bed with the girl McFarlane. Walker then went to the principal house on the property with the intention of severing the telephone line so that no call could be made to the police. However he was seen at the house by Waaka's mother while in the act of ripping out the telephone. He slashed at her with his knife, as he put it, to show her that he meant business and to stop her from warning Waaka. He cut Mrs Waaka on the neck, above the eyes, on the hands and under her arm and hip. She later had to receive stitches for a number of these wounds. He also caused her to suffer a dislocation of the shoulder. Walker then went to the bach at the back of the house and broke the glass on the door to obtain entry. Once inside the bach he tried to stab Waaka in the genitals. When Waaka tried to fend off the attack by wresting the knife from him, Walker, as he put it in his statement, worked the knife backwards and forwards to cut Waaka on the hands.

Waaka suffered a number of cuts on his hands, one six inches in length. Then Walker found McFarlane, grabbed her around the throat and appeared to be strangling her when he was hit on the head by another member of the Waaka family. When McFarlane was examined at hospital she was found to have a swelling and bruising of the neck consistent with an attempt at strangulation and she also suffered bruising of the chest wall.


Walker has a very unfortunate history and he has previous convictions for offences of violence although the sentencing Judge put these completely to one side because they had occurred more than 10 years before. He dealt with the offences as bad cases of assault with a knife.

Mr Eason has made a very moving submission in which he has traversed many of the unfortunate circumstances of Walker's early life. He has submitted to us that the sentencing Judge failed to take sufficient account of these factors, particularly that Walker, having found some stability in the association that he had formed with McFarlane, suddenly found that he had been rejected by her and that his place as her companion had been usurped by another.

In the end we think that the Judge had no other course open to him than to treat this as a very serious case of violence with a knife. It was Walker's avowed intention to do very serious harm to Waaka and he went about this in a way which exhibits some determination on his part. He was

astute enough to endeavour to cut the line of communication to the police before he set upon Waaka. It is possible that it was only the warning from Waaka's mother and the physical intervention of his father which saved Waaka from the infliction of a very serious and permanent injury.

Mr Eason has said all that can be said in support of this application for leave to appeal but having regard to the gravity of the offences, involving the use of a knife, we must regard the application as being without merit. It is accordingly dismissed.



Solicitors

Parry, Field & Co (Christchurch) for appellant
Crown Solicitor (Wellington) for respondent