

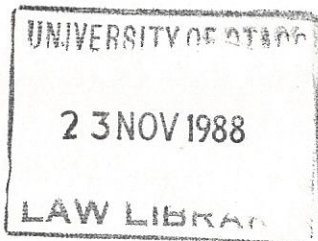
R. v Stubbings 4.8.88

Set 2 GG-44

IN THE COURT OF APPEAL OF NEW ZEALAND

CA 125/88

THE QUEEN



v

GARY FRANCIS STUBBINGS

Coram: Richardson J
Somers J
Casey J

Hearing: 4 August 1988

Counsel: Miss Susan Gray for applicant
Miss Kristy McDonald for Crown

Judgment: 4 August 1988

ORAL JUDGMENT OF THE COURT DELIVERED BY RICHARDSON J

Following an incident at Paremoremo Prison on 17 August 1987 Gary Francis Stubbings, an inmate there, stood trial in the District Court on 3 assault charges, each involving a different Prison Officer. One charge was dismissed by the Judge during the trial, there being no evidence of an actual assault on the Prison Officer concerned. Stubbings was found guilty by the jury on the other 2 counts and was sentenced to 2 years 6 months imprisonment on the more serious charge of assaulting Prison Officer McLeod with intent to injure and 9 months imprisonment on the charge of assaulting Prison Officer Ball, the sentences to be concurrent with one another but cumulative on his existing sentence of 5 years imprisonment imposed on a conviction for manslaughter on 20 March 1987.

Stubbings initially applied for leave to appeal against both conviction and sentence. The conviction application is not

pursued and it is accordingly dismissed. The ground advanced in support of the sentence application is that the sentence was manifestly excessive. That requires consideration of the circumstances of the offending.

About 11 am on the day in question inmates were being moved back to their cells one at a time. The 3 Prison Officers were standing in a line on the landing leading to the cell block. Prison Officer McLeod, the senior officer, was in the middle. The evidence of the 3 Prison Officers was that when Stubbings took his turn and approached them he suddenly struck Officer McLeod. McLeod said that there was a flash of white light and that was all that he knew. Ball said that McLeod was punched several times in the face and head, fell to the floor, and appeared to be unconscious. The third Officer, Field, said that Stubbings definitely struck McLeod twice and pushed him to the floor. The 2 officers said that Stubbings then struck Ball and Ball said there were several blows before they were able to subdue Stubbings. In cross-examination the 3 officers denied that McLeod had struck the first blow or hit out at Stubbings at all. Stubbings did not give evidence but 2 other inmates did. They had been in their cells and unable to see the scene directly but claimed that they had done so from mirrors they had positioned on the floor outside their cell doors. Their evidence was that McLeod elbowed or struck Stubbings in the chest and Stubbings then retaliated, hitting him once only, and that Ball also hit Stubbings first.

Miss Gray, counsel for Stubbings, submitted that the sentencing Judge should have sentenced him on the less serious basis of events reflected in the evidence of the defence witnesses or, at least, should have taken that evidence into account on sentencing. By their verdicts the jury clearly rejected any defence that Stubbings was acting in self-defence. The sentencing Judge, who had of course presided over the trial, said that on the evidence he heard

he was satisfied that the assault was totally unprovoked. On the evidence before him, and taking into account the jury's verdict, he was well justified in sentencing Stubbings on that basis. The Judge also described the assault as particularly vicious and savage. Prison Officer McLeod received a broken jaw which had to be wired shut for a month, suffered damage to his ribs and broken teeth. He was hospitalised for 3 days and was off work for 8 weeks, and then after a brief return felt unable to continue his career in the Prison Service and left to seek other employment. For his part Officer Ball sustained bruising to the side of the head.

Stubbings is 28 years old. He has a long list of convictions, including several for violent offending as well as the conviction for manslaughter. But the 2 factors which weighed particularly with the sentencing Judge were that the assault with intent to injure McLeod was a very serious offence of its kind and that it was directed at a law enforcement officer.

Miss Gray has said concisely and carefully everything that could possibly be said in support of the appeal, referring as she did to the circumstances and to other sentences imposed, but we are satisfied that the sentence actually imposed in this case was an entirely appropriate one. It was a very serious assault and it is important that the courts demonstrate in sentencing that proper discipline in prisons must be maintained and that they demonstrate the concern of the community with such assaults on law enforcement officers acting in the course of their duty.

The application for leave to appeal against sentence is accordingly dismissed.



Solicitors:

Johnston, Prichard, Fee & Partners, Auckland, for applicant
Crown Law Office, Wellington.