

No Case ^{12/15 NZL.}

NOT
RECOMMENDED

IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 215/88

THE QUEEN

v.

PETER DESMOND BURNEY

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Coram: Cooke P.
Richardson J.
Barker J.

Counsel: D.M. Wilson for Appellant
P.J. Morgan for Crown

Judgment: 11 May 1989

JUDGMENT OF THE COURT DELIVERED BY COOKE P.

The applicant's appeal against conviction having been dismissed by the judgment of this Court delivered on 22 March 1989, we now deal on written submissions (as agreed at the November hearing) with his application for leave to appeal against his sentence of six months' periodic detention. He was found guilty on the charge that, knowing that Phillips had committed assault, he assisted Phillips to avoid arrest. The applicant is the owner of the nightclub concerned; Phillips had acted in effect as a bouncer in removing an unruly patron, though Phillips may have been acting as a volunteer on the night in question. He had previously been employed by the applicant.

We have considered all the matters raised by counsel for the applicant but the fact remains that this was quite a serious offence in the light of the responsibility of

persons running nightclubs. As the sentencing Judge had to note, in the latter part of 1987 the applicant had been before the courts on three occasions for different offences, none particularly serious but collectively indicating irresponsibility at least. He had been dealt with by fines. We are satisfied that on this occasion periodic detention was called for.

With regard to counsel's submission that the delays in finalising this matter have not been of the applicant's making, they have been caused basically by his raising an allegation in support of his appeal against conviction which required considerable investigation and which in the event failed. It would not be right to allow this to assist his challenge to the sentence. The application is dismissed.

RB 20/11/87 P.

Solicitors:

Boot & Roose, Hamilton, for Appellant
Crown Solicitor, Hamilton, for Crown