

THE QUEEN

R

v.

JEFFERY JAMES BENTLEY

Coram: Somers J (presiding)
Bisson J
Smellie J

Hearing: 11 July 1990

Counsel: R. Maidment for Appellant
N.A. McAteer for Crown

Judgment: 11 July 1990

JUDGMENT OF THE COURT DELIVERED BY SOMERS J

Jeffrey James Bentley was sentenced in the High Court at Auckland on 11 April 1990 to three years imprisonment for sexual violation by rape on which charge he was found guilty by a jury. He now applies for leave to appeal on the grounds that the sentence was excessive.

On 28 February 1989 a group of hotel employees, male and female, gathered at the flat of one of them for what appears to have been intended, and was in fact, an overnight drinking party. The complainant, who in evidence described herself as 'slightly drunk', became ill and got into a bed wearing her clothes. She woke to find that Bentley was having intercourse with her. Bentley, who gave evidence, said that

he climbed into the bed beside her, that she awoke, that they had some conversation and that eventually he had intercourse with her not only without objection, but with implicit consent. The jury, obviously, did not accept his evidence and believed that of the complainant. While the offence was not accompanied by violence it is clear that the girl was much distressed at the time and complained that Bentley had raped her.

Bentley was 19 when the offence occurred. He has no previous convictions of any kind and is variously described as quiet, shy, and naive. He has been employed in an hotel as a bar tender and has good reports from his employers and from numerous people who have given testimonials in his favour. The pre-sentence report is also favourable.

The Judge on sentencing referred unfavourably to the activities of the group who were partying - their regular over indulgence in alcohol and the freedom of association they exhibited. The evidence indicated that at the end of such a night as that on which the offence occurred they would go to sleep on any available bed whether or not occupied. The Judge thought Bentley's associates almost as much to blame as he. He took into account in favour of Bentley, the fact that he was relatively young, that there was no premeditation and that no force was used.

Mr Maidment, who has said all that could be advanced in support of the appeal, has stressed the circumstances mentioned by the Judge already touched on. In substance he has submitted that the sentence is excessive because not enough regard was paid to them. We cannot agree.

Punishment, in the case of rape imprisonment, is imposed for the commission of the offence. Its length will reflect its gravity and the other purposes which sentences are intended to serve. We are satisfied the Judge has taken into account all matters which could properly be urged in favour of Bentley and has also had proper regard to the seriousness of the offence, in this case largely measured by the violation of, and the resulting consequences borne by, the complainant.

We are unable to find that the sentence is excessive and, accordingly, leave to appeal is refused.

