

THE QUEEN

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v

TONY EDWIN CARL ANDERSON

UNIVERSITY OF OTAGO  
19 MAR 1991  
LAW LIBRARY

Coram: Casey J  
Bisson J  
Jeffries J  
Hearing: 24 October 1990  
Counsel: G L Turkington for appellant  
N McAteer for Crown  
Judgment: 24 October 1990

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ORAL JUDGMENT OF THE COURT DELIVERED BY BISSON J

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This is an application for leave to appeal against sentence. The applicant stood trial in the High Court at Auckland on an indictment containing the following three counts,

"...on the 9th day of June 1989, at West Auckland, with intent to cause grievous bodily harm to DARRYL JAMES WELLS, wounded the said DARRYL JAMES WELLS.

...on the 9th day of June 1989, at West Auckland, with intent to injure ANTHONY JOHN WELLS, assaulted the said ANTHONY JOHN WELLS.

...on the 9th day of June 1989, at West Auckland, without lawful authority or reasonable excuse, had with him in a public place, namely, the Huapai shops carpark, an offensive weapon, namely, a wooden batten."

He was found guilty on each count and on 6 June 1990 was sentenced to imprisonment for 3½ years in respect of the

first count, 1 year on the second count and 6 months on the third count, all terms to be served concurrently. These sentences took into account the fact that the applicant had already spent 8 months in custody so that the effective sentence amounted to 4 years 2 months imprisonment.

Anderson and a group were drinking at a hotel. Also there were the two Wells brothers. The applicant passed a remark that they had "narked" on his mate and ought to be dealt with. Outside in the carpark he pulled on a balaclava and, armed with a two to three foot wooden batten, hit Darryl Wells on the head and Anthony Wells about the arms. He then left the scene.

Darryl Wells was treated in the Emergency Department of the Auckland Hospital. According to the report of the Casualty Officer he had,

"a large horizontal seven centimetre laceration across the forehead. ...

The patient was sent for a skull x-ray which was reported as normal by the radiologist.

Under local anaesthesia ... the wound was closed with 18 ... sutures.

Mr Wells received a booster injection of tetanus toxoid. He was advised to see his own family doctor in five days for removal of the sutures."

According to the victim impact report,

"As a result of the injury the victim was unable to fulfil his obligation to the Auckland Colts Rugby Team for which he has been selected. This has effectively put his representative rugby career back one year.

The victim also states that, although he already wears optical glasses, he has perceived a slight deterioration in his sight especially in the right eye."

The Judge, on sentencing, referred to the applicant as follows,

"It is quite obvious from reading the reports that you have had an alcohol problem. Alcohol was the cause of what happened on this particular night. You have been referred to Hanmer Springs and put on various programs but you have failed to respond. Setting aside your convictions for actual crime, when one looks at your driving offences one finds that there are two cases of driving with excess breath alcohol. As well, you have snapped your fingers at authority and have driven on a number of occasions while disqualified. Your criminal record shows that from the time you were 20 you have had twelve convictions for assault. I accept that the last one against some member of the public was in 1983 and your de facto wife seems to have been the object of your attentions in 1987. You are just unable to control yourself."

However, the Judge did notice that there had been some improvement in the applicant's behaviour of recent date.

Mr Turkington, in his submissions for the applicant, did not advance any argument based on the personal circumstances of the applicant. His argument was that the injury inflicted on the first complainant was not so serious as to call for such a sentence as was imposed in this case. He submitted that sentences of 4 or 5 years imprisonment had been imposed in cases which involved much more serious injuries. However, Mr McAteer for the Crown drew attention to distinguishing features in the cases cited by Mr Turkington. No good purpose would be served by referring to

those cases individually as in some cases higher sentences might have been upheld by this Court.

In the end, as Mr Turkington accepted, the sole and decisive point he could raise was that the injuries were not so severe as to warrant an effective sentence of 4 years and 2 months imprisonment.

However, in a case such as this the injury which resulted is not the only factor to be taken into account. In this case the nature of the assault is material because of its potential to cause serious injury. Striking a person on the head with a length of wood with intent to cause grievous bodily harm, must be regarded as a serious assault, the extent of the injury being fortuitous. And there is another feature of this case properly taken into account by the Judge. The applicant armed himself, disguised himself, pursued his victims and set upon them because they had been prepared to give evidence against one of his friends. As the Judge said,

"That is conduct which is reprehensible in an extreme and strikes at the very heart of justice. One of the matters which this Court has got to do is ensure that people like you who commit offences of this nature do not get away with it very easily, and that they will get the full force of what the law requires a Court to do in circumstances such as these."

This is certainly an aggravating feature of the case and places it in a special category.

We are satisfied that having regard to the serious nature of the assault, to the nature of the weapon, to the

blow to the head, to the injury and unfortunate consequences for the principal victim, and the aggravating feature of attacking for vengeance a person who had done his duty as a witness, and all the surrounding circumstances including the further offences, an effective sentence of 4 years 2 months imprisonment was justified.

Leave to appeal is refused and the application dismissed.

*C. H. Brinson J.*

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