IN THE COURT OF APPEAL OF NEW ZEALAND C.A.413/96

THE QUEEN

v

NAUMA NIKORA

Coram: Richardson P
Gault J
McKay J

Hearing: 5 December 1996

Counsel: R P Chambers for Appellant
S P France for Crown

Judgment: 5 December 1996

JUDGMENT OF THE COURT DELIVERED BY McKAY J

This appeal is against a sentence of 2½ years imprisonment on a charge of aggravated robbery. The appellant does not challenge the police summary of facts which was before the sentencing Judge. That summary shows that the appellant and a group of male associates left a nightclub in Christchurch about 2.20 am, and entered an alley which gives access to the Cashel Mall. Two young women were walking through the alley at this time. The group of men formed up on either side of the alleyway, so that the girls had to walk between them. As they did so, one of the men lay on the ground in front of them, and grabbed the complainant's handbag as she walked past. She was then forced against the wall, punched a number of

times in the face and body by members of the group, and had her head smashed up against the wall. Another member of the group indecently assaulted her. Her companion was also assaulted by members of the group. The complainant managed to hold on to her handbag until the straps broke, and the offenders then made off with it.

The victim impact reports record that the women were aged 18 and 19 years. Both suffered headaches and soreness for two to three weeks from having had their heads banged against the wall, and both have since felt scared to walk about town on their own.

The sentencing Judge referred to the case as a serious one involving a premeditated attack on the young women by a group of several youths. He regarded the premeditation and the use of violence as aggravating features. He ignored the sexual assault, as the appellant was not involved in that incident. He gave credit for the appellant's plea of guilty, his offer of reparation and some expression of guilt and remorse. He could find no special circumstances such as would avoid the requirement of section 5 of the Criminal Justice Act 1985 that a full time custodial sentence be imposed.

While the appellant accepted that the incident occurred as described in the police summary, he contended through his counsel that he was not involved in the attack on the girls. He had been with his friends at the nightclub, and was intoxicated for most of the night. He claims that when his friends left the nightclub

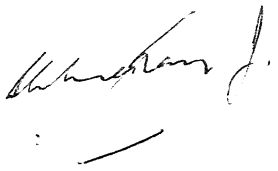
he stayed back, and only joined his friends later. He claims this occurred only after the attack on the girls in the alley, and that he was at no time in the alley and was not involved in the attack or in the taking of the handbag. These claims, which we were told would have been contrary to the Crown evidence, are totally inconsistent with his plea of guilty. By that plea he admitted being a party to the robbery carried out by the group. Even if he did not personally assault either of the young women, he was a party to the attack made by his associates.

He claims that he was not involved in any planned or premeditated action. We note, however, from the pre-sentence report that he told the Probation Officer "things got out of hand, we meant to take the girls' handbags but did not get involved with the assaults". They could hardly have expected to be able to take the handbags without an assault, which by definition includes the actual or threatened application of force.

The matter must therefore be approached on the basis of the appellant's plea of guilty and his acceptance of the police summary. On this basis, Mr Chambers very properly conceded that the sentence of 2½ years, after allowing for the plea of guilty, could be regarded as within the appropriate range available to the Judge. He referred, however, to matters relating to the appellant's background and circumstances. These matters were put before us much more fully than was available to the sentencing Judge. They show a very unhappy family situation, with shortages of money and food, and a history of abuse and violence from the appellant's father. The appellant is 18 years of age, and although he has some

previous convictions, he has not previously received a custodial sentence. His mother and other members of his family in Auckland are anxious to help him, and propose to pay his fare to enable him to return to the Cook Islands upon his eventual release. This will remove him from the situation in which he has been placed with his father in Christchurch.

Having given these matters careful consideration, we have reached the conclusion that a somewhat lesser sentence would be sufficient to adequately mark the seriousness of the offence and the need for deterrence in the interests of the safety of the public. The sentence of 2½ years imprisonment is accordingly quashed, and in its place a sentence of 18 months is imposed.



Solicitors
Crown Law Office, Wellington, for Crown