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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M733/84

801

BETWEEN K

Appellant

AND POLICE

Respondent

Hearing: 22 June 1984

Counsel: Mr Roberts for appellant
Miss Shine for Police

Judgment: 22 June 1984

ORAL JUDGMENT OF HILLYER J

This is an appeal against a sentence of corrective training for three months imposed in the District Court at Auckland by District Court Judge Bergen on 21 May 1984.

The appellant is a young man of 17 years of age who has a mother and father who are clearly concerned and caring about him. He has had a childhood in which the family, through force of circumstances, has had to live in a number of different places and a number of different countries. This does seem to have had some unsettling effect upon the appellant.

That of course is not an excuse for what happened. In endeavouring to understand this young man, however one must take into consideration the influences of that nature to which he has been subjected Such influences can have beneficial effects, and I would not like it thought that I am suggesting that the unsettled childhood is any excuse for what he did. A young man of character and determination would be able to benefit from the varied experiences he has had.

It appears that the appellant is intelligent and has many good qualities. He should be able to take advantage of his early upbringing rather than let it operate to his detriment. Fundamentally his problem is simply that he is not prepared to accept discipline. Everybody must do this; nobody can live in a community without accepting the responsibilities and the obligations that living in that community impose, and to react against them is no indication of intelligence.

He attended a number of good schools, but did not take full advantage of them. His parents have in their own ways endeavoured to assist him, but he has become more and more undisciplined. That is the total explanation for the offence which he eventually committed on 25 March 1984, where he was involved in what can only be described as a vicious assault on a Mr F and a Mr T. . It may be that alcohol had a lot to do with the offence, but if intelligent young men are unable to cope with drinking, they should not drink.

An argument developed between the appellant and his companions on the one hand, and Messrs F and T. and their friends on the other, until finally the appellant hit the complainant T. twice in the fist with his closed fist and then kicked the complainant Field full in the face. At the time the appellant was wearing heavy lace up boots, which became a vicious weapon. One can well understand the District Court Judge being appalled at this behaviour, and believing that it was necessary to teach the appellant a severe lesson.

It was in those circumstances that the learned Judge imposed the sentence of three months corrective training.

On appeal I have had the advantage of some material that was not before the learned Judge, in particular two

references. One was from Father Felix Donnelly, the senior lecturer in Psychiatry and Behavioural Science at the University of Auckland who was involved in counselling the appellant on a number of occasions in 1983. He has been involved in endeavouring to assist the family to come to terms with the difficulties they were having.

The other reference was from Mrs Robyn Northey of the Department of Social Welfare, Taranaki House, Social Work Training Centre. The appellant has been to her home and was treated there with kindness and respect. She, as does Father Donnelly, speaks sympathetically and understandingly of the appellant, and of the problems that the family has had, both in their travels and with the appellant.

I have also had the benefit of submissions from Mr Roberts, and in particular he has drawn my attention to the remarks of the Court of Appeal in the case of <u>R v Minto</u> CA 115/82, Judgment 1 July 1982. In that case the Court of Appeal referred to S.13B of the Criminal Justice Act. It expressly enjoins all Courts in determining the most suitable method of dealing with any persons convicted of an offence punishable by imprisonment, to have regard to the desirability of keeping offenders within the community so far as this is practicable and consonant with the safety of the community. The Court said the provision must be kept in mind, particularly when thought is being given, to the importance of a relatively short custodial sentence. The Court made reference to the penalties of community service and periodic detention, and indicated that these were intended by Parliament to be and indeed are, very real and effective alternatives to imprisonment.

I note that the Probation Officer indicated that while the appellant had little by way of assets [which would indicate that he thought a fine was not suitable] the

appellant would be able to attend periodic detention for a lengthy period. Clearly the learned District Court Judge decided that in his view corrective training was a more suitable punishment, but I am reinforced in the view I take of the matter by that comment from the Probation Officer. He did make reference to the appellant's association with Father Donnelly and Mrs Northey, but did not present their association with the appellant in as sympathetic terms as Father Donnelly and Mrs Northey did in the references put before me.

The task of deciding what is to be done with a young man in these circumstances is the most difficult any Judicial Officer has to undertake. One is conscious of the need to ensure that a young man realises just how serious his offences are, and what the consequences of further offending will be. It is important that it is realised that a continuation of an attitude such as has been displayed by the appellant will undoubtedly result in further offending. It is the attitude which has to change.

One is conscious of the need to signify the disapproval of the community for behaviour of this nature, and to indicate bluntly that it will not be tolerated.

Weighing all these matters as best I can, I have come to the conclusion that I should allow the appeal and substitute for the term of corrective training a period of periodic detention. I appreciate that the appellant has already served just over a month of his sentence of three months, and I take that into consideration in the penalty I fix. I would not like him to think that he has got away with something, that he is being treated softly, and that he can laugh at the law.

The penalty I propose is intended to recognise the conflicting interests of the community and himself. If

he accepts the further discipline, he will have to undergo in a proper spirit, it will be good for him and he will find that it is not necessary for him ever to come back before the courts. If he does not accept it, he will be back inevitably before the courts, receiving more and more severe sentences until his life is ruined.

He will be sentenced to four months non-residential periodic detention, such period to date from 21 May 1984. He is ordered to report to the Periodic Detention Centre at Pitt Street, Auckland Central, at 6 pm, Friday 29 June 1984, and thereafter as directed by the Warden.

I do not impose a period of probation partly because the probation officer did not recommend it, and partly because in my view the appellant must learn himself to cope, with the assistance of the caring and loving parents he has. He should seek, with their guidance, further assistance from counsellors such as Father Donnelly and Mrs Northey, but I think it best for him to do that himself. He is of adequate intelligence and able to do so.

P.G. Hillyer J

Solicitors:
J.E. Burke Newmarket for appellant
Meredith Connell & Co for respondent