

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

GR 2/84

147

BETWEEN BERNARD JOHN McDONALD

Appellant

A N D THE POLICE

Respondent

Hearing: 9 February 1984
Counsel: A.J. Shaw for Appellant
G.D. Pearson for Respondent

ORAL JUDGMENT OF ROPER J.

This is an appeal against a sentence of three months' imprisonment on a charge of being unlawfully in possession of a pistol, namely a sawn off single shot shotgun which had been cut down to such a length as to bring it within the definition of a pistol. It is a case which has given me some concern.

The facts, which are not in issue, are, owing to a number of recent incidents involving violence between two rival motorcycle gangs, search warrants were executed on addresses occupied by members of the two gangs on the 23rd November last. The police were searching for firearms, explosives and the like. One of the properties searched was at 30 Lindsay Street, which is occupied by the Appellant, his sister and another member of the Devils Henchmen Motor Cycle Club. Under a mattress of a bed in the Appellant's bedroom the police found this weapon. It was loaded, broken open and four shotgun cartridges were with it. The Appellant's explanation for having the weapon was referred to by the Probation Officer in these terms:-


"He had removed it from the Devils Henchmen's Clubhouse where it was usually kept so that it could not be used by some younger members of the group who were having trouble with members of another motor cycle club. He agrees that it was extremely foolish to have left the weapon loaded but hiding it from other club members seemed of prime importance at the time."

The Appellant is 25 and has no previous convictions of any moment. I am inclined to accept that the possession is not perhaps as sinister as the learned Trial Judge appeared to think. However, I must agree that possession of a sawn off shotgun and loaded, a weapon which has really no use except in this sort of gang warfare, is to be deterred, particularly when it is found in the hands of gang members. The learned Trial Judge referred to the situation which apparently prevails in Timaru and he is in a far better position to know that situation than I. He said:-

"The public is becoming increasingly alarmed, and rightly so, at the situation which exists in Timaru now as regards these two groups, and where loaded fire arms are concerned..."

He went on to say that from now on where loaded firearms are concerned the penalty will progressively increase.

I am satisfied that it is a case for deterrence and I am not satisfied that in the circumstances the sentence was either inappropriate or manifestly excessive. Accordingly the appeal is dismissed.



Solicitors:

Petrie, Mayman, Timpany & More, Timaru, for Appellant
Crown Solicitor, Timaru, for Respondent