

646

Butterworth's

BETWEEN

MAXWELL

Appellant

A N D

POLICE

Respondent

Hearing : 6th June 1984

Counsel : H.H. Roose for Appellant
C.Q.M. Almao for Respondent

Judgment : 6th June 1984

(ORAL) JUDGMENT OF BARKER, J.

This is an appeal against sentence. The appellant pleaded guilty in the District Court at Hamilton to one charge of common assault under the Crimes Act. On 26th March 1984, after considering the probation report, the District Court Judge fined the appellant \$700.

It is submitted that the sentence was manifestly excessive. The summary of facts states that the appellant was a passenger in a vehicle. He got out of the vehicle and approached the complainant who was walking with his girlfriend in Seddon Road, Hamilton. The appellant assaulted the complainant, causing a broken nose and a black eye. The appellant claims that this complainant had made a rude gesture to him as he drove past. The Police are unable to corroborate this but this explanation

does not feature in the District Court Judge's notes on sentencing.

The probation report discloses that the appellant is aged 19; he is a first offender; he is a hard working and careful person who has accumulated savings and owns a motorcar. He is well regarded by his employer and generally speaking, seems a worthwhile citizen. The District Court Judge quite rightly noted concern about the unnecessary violence and said that the appellant was lucky not to be facing a term of imprisonment.

Clearly the District Court Judge took the appellant's good record into account in treating this as an isolated lapse. He warned him that should there be any deviations in the future, he might face imprisonment.

Whilst the fine was substantial and might have been slightly more than I myself might have imposed sitting at first instance, I cannot say that the fine is manifestly excessive. The appeal is therefore dismissed.

R. D. Barker J.

SOLICITORS:

Boot & Roose, Hamilton, for Appellant.

Crown Solicitor, Hamilton, for Respondent.