

IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY

M.449/84

1537

BETWEENMONAHAN  
AppellantA N D POLICERespondent

Counsel: P.B. Mills for Appellant  
C.Q.M. Almas for Respondent

Hearing and  
Judgment: 5 December 1984

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ORAL JUDGMENT OF GALLEN J.

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On 25 October 1984, the appellant was sentenced on 4 charges arising out of incidents which occurred on 2 September when it was alleged the appellant had assaulted a Police Constable acting in the execution of his duty and had resisted the same Constable. The other two charges relate to the same incident and involve offensive language and damage to the Constable's tie.

The incident appears to have been an unpleasant one. The Police Constable quite properly was requesting the

appellant to remove her vehicle and the reaction which occurred seems to have been totally out of proportion to his intervention. The learned District Court Judge was obviously concerned with a number of matters relating to the personal circumstances of the appellant and to which he refers. He was also concerned and rightly concerned, that the Police who have a difficult job to do, should be protected and that assaults on them are to be regarded by the Courts as serious, both in the particular case and as a deterrent to others who may be like-minded. Having referred to the special considerations which related to the appellant personally, he indicated that in balancing these against the obligation to support the Police and to ensure that as far as possible there was a reasonably orderly society, he came to the conclusion that a term of imprisonment was appropriate and the appellant was sentenced to imprisonment for a term of 3 months on each of the more serious charges. The maximum penalty provided in respect of these charges is 6 months' imprisonment or a fine of \$1,000.

The Probation report refers in detail to the personal circumstances of the appellant and I agree with the learned District Court Judge that she has had the most unfortunate of backgrounds and indeed it would be surprising if the results of her upbringing were not revealed in some kind of anti-social behaviour. This does not of course mean that the public can be expected to accept such behaviour. It is also clear from the

Probation report that she has accepted her responsibilities towards her child, but has not been prepared to accept counselling which might hopefully prevent the sort of behaviour with which the Court is now faced.

Ms. Mills has referred to a number of matters and has also produced two references which support the comments relating to the acceptance by the appellant of her responsibilities to the child and to the community in which she has lived. She refers to a matter which was not as such before the learned District Court Judge - that is the effect on the appellant's child of a prison sentence here, in that it appears that the only possible place where the child could be cared for would be quite unsuitable. That is a matter which gives me concern. While I substantially agree with the approach which the learned District Court Judge has taken, I note that he has referred to the necessity to balance the personal considerations against the requirements of the community and I wonder whether if he had had available to him the comments relating to the child, he might have considered some other course.

There is one further matter which concerns me. Although the appellant has a number of previous convictions, all of these relate to offences of dishonesty and this is the first occasion on which she has been before the Court for an

offence of this kind. I am informed that one previous offence relating to her attitude towards the Police was associated with dishonesty and not for violence.

With a first offence of this kind, I think that it might have been appropriate to consider the possibility of a non-custodial sentence such as periodic detention. That is not available in this case and because it is not available, it was not considered by the learned District Court Judge. With some anxiety and hesitation, but being particularly concerned over the position of the child, I am prepared to allow the appeal, but I agree with Mr Almas that in circumstances such as these it is necessary to mark the disapproval of the community and as far as possible to provide some degree of support for the Police in the very difficult job which they are required to undertake. What the appellant has done can properly be regarded as an offence to the community and I think it is reasonable that she should make recompense to the community. The Probation report suggests community service is an appropriate penalty.

In the circumstances she will be required and I understand she consents to this, to undertake community service of 100 hours. In addition to that, I agree with Mr Almas that it is appropriate that a fine should be imposed and I also note that the appellant is in a position to pay a fine. I think

however, that the fine should be assessed in such a manner as not to have effects on persons other than the appellant and I bear in mind of course that the child must be considered. That being so, I do not think the fine should be such as to totally remove her savings. She will be fined \$250 on the charge of assaulting a Police Constable.

*P. B. Mills*

Solicitor for Appellant: Ms. P.B. Mills, Hamilton

Solicitor for Respondent: Crown Solicitor, Hamilton

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