

IN THE HIGH COURT OF NEW ZEALAND  
ROTORUA REGISTRY

M.35/84

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BETWEEN: RICKY WAYNE ORMOND  
of Rotorua, Labourer  
Appellant

A N D: THE POLICE  
Respondent

Offence: Using Insulting Language  
Dealt With: 20 February 1984 At: Rotorua By: Monaghan DCJ  
Sentence: Imprisonment 3 months

Appeal Hearing: 20 March 1984

Oral Judgment: 20 March 1984

Counsel: J Te M Chadwick for appellant  
L H Moore for respondent

Decision: APPEAL ALLOWED - IMPRISONMENT REDUCED  
TO 2 MONTHS.

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(ORAL) JUDGMENT OF GALLEN J.

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On the 20th February 1984 the appellant was sentenced to a term of imprisonment on a charge that, having been sentenced to Periodic Detention, he used insolent words while he was in the legal custody of the Warden. The appellant apparently entered a plea of guilty to the charge. There has been some concern over whether or not he was represented at the time, but it appears that he was represented, probably by the Duty Solicitor.

The learned District Court Judge, in the circumstances, did not call for a Probation report, and imposed a sentence of 3 months imprisonment bearing in mind

the record of the appellant and his apparent attitude towards authority.

It is relevant to note that the appellant at the same time pleaded guilty to a charge of breach of a sentence of Periodic Detention. On that charge he was convicted and sentenced to a term of 1 month's imprisonment - such term being cumulative on the 3 months imposed in respect of the insolent language charge.

Mr Chadwick has today made detailed submissions indicating the motivation of the appellant and the general background to the offences. It seems likely - and Mr Moore, as I understand it, accepts - that this detailed information was not before the learned District Court Judge at the time sentence was imposed. I should say immediately that I agree with the paramount importance of supporting the Warden in what is to be regarded as an exceedingly difficult job. It is also an important job, because the provision of Periodic Detention as an alternative to imprisonment is a very important option to Courts required to sentence, and under those circumstances it is quite vital that as a system it should be upheld and persons involved in its administration supported.

I accept that in the circumstances which occurred, the appellant put the Warden in a difficult position and one which would no doubt have affected his ability to cope with other persons who were quite deliberately involved in the situation by the appellant. Those are all reasons for regarding this as a much more serious matter than would normally have been the case for a charge of this kind.

I agree with the learned District Court Judge that it was appropriate that the view of the Court in this case should be made clear to the appellant and to others who are involved in this kind of behaviour, and indeed in this kind of sentence, that this sort of behaviour will not be tolerated and that under those circumstances it was appropriate that a term of imprisonment should be imposed for an offence which normally carries a fine. My concern, however, arises from the fact that it was the maximum penalty which was imposed. There is recent authority to the effect that the maximum should be reserved for the most serious case which can be envisaged, and I do not think that it can be said that this is the most serious case of its kind, even having regard to the background circumstances.

I accept that if the material which has been placed before me had been available to the learned District Court Judge, he might have been in a position to regard the matter differently. I am also prepared to accept that the appellant is more aware of his situation now than he was, and has shown some signs of being prepared to accept that there must be a major change in his behaviour if he is to be a reasonably acceptable member of the community.

Having regard to all those circumstances, I am prepared to reduce the sentence from 3 months to 2 months. I think, as I have already said, that a term of imprisonment is appropriate, and I think, bearing in mind the submissions which Mr Moore made and the general

background, that it is proper that a more substantial term of imprisonment than that normally contemplated for the offence should be imposed.

The appeal will therefore be allowed to the extent that the sentence of imprisonment is varied by reducing the term from 3 months to 2 months.

R.S. Goller /

Solicitors:

Mingston & Chadwick, Rotorua, for appellant  
Crown Solicitor, Rotorua, for respondent

