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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

N2LR
M.27/84
X

315

BETWEEN T P

Appellant

A N D THE POLICE

Respondent

Hearing: 28th March, 1984.

Counsel: J. C. Hooper for Appellant.
C. Q. M. Almao for Respondent.

Judgment: 28th March, 1984.

ORAL JUDGMENT OF TOMPKINS, J.

The Appellant has appealed against a sentence of corrective training imposed in respect of each of two charges, one that on the 21st April, 1983, at Hamilton, he obstructed a police constable acting in the execution of his duty, and the other that on the same day he assaulted a different police constable acting in the execution of his duty. The former carries with it a maximum penalty of three months, the latter a maximum penalty of six months imprisonment.

The convictions arose out of a disturbance that occurred in the Hillcrest Tavern at five past ten in the evening. A patron of the hotel having been arrested he struggled and resisted. The police were surrounded by a large group of hotel patrons, and the Appellant was one of three who moved to interfere with the police officers who were struggling on the ground with the prisoner. The Appellant was warned a number of times to leave, but he persisted and was seen to kick and punch at the police officer. Subsequently, when he was arrested he struggled and endeavoured to escape. Indeed on

that account as given in the summary he could also have been facing a charge of attempting to escape from custody.

When the matter came before the District Court the Appellant apparently sought to dispute some of the facts set out in the summary to which I have referred, as the result of which evidence was given by the Appellant and by the police constables concerned. Having heard that evidence the learned District Court Judge made it clear that he accepted the police account of the events that occurred. He also said that he was inclined to follow the recommendation of the Probation Officer and impose a term of periodic detention, but that having heard the evidence in more detail and with a colour that the written summary cannot attain, he took a far more serious view of the incident than he would have had he read the written material only. I have not had the advantage that the learned District Court Judge had in that respect.

I share the view of Mr. Almas, counsel for the Respondent, that this presents a difficult sentencing task. As Mr. Hooper in his submissions pointed out, s.14 A of the Criminal Justice Act, 1954, empowering the imposition of a sentence of corrective training, requires that that should only be done where the court was satisfied that had the person been of or over the age of 20 years it would have sentenced him to imprisonment for a term of not less than three months. That means that in respect of one of the charges the court must be satisfied that the person would have been sentenced to the maximum, and in respect of the other that he would have been sentenced to one-half of the maximum.

The Probation Officer's report shows that the Appellant has two previous convictions, one in August 1980 for burglary, and one in January 1981 for fighting in a public place, both being in the Children and Young Persons Court.

At the time of the Probation report in December 1983, the Appellant was 18 years old. The report otherwise does not give rise to concern. The Appellant has had some stability in his residence, employment and finance, although the Probation Officer observes that his general lifestyle shows a somewhat casual attitude. I am also concerned that one of his previous convictions was for fighting, an offence similar to those he has now faced. The Appellant is living at home with both his parents, both of whom are employed. It seems to me that he is at a stage where he is going to have to decide whether he is going to resist the inclination he apparently has to become involved in violent offending. However, if he does have such an inclination it has only brought him to the attention of the court on one previous occasion.

I have considered carefully the submissions made by Mr. Hooper and the statutory provisions relating to corrective training. With a good deal of hesitation, and recognising that I have not had the advantage that the learned District Court Judge had in hearing the evidence, I have decided that the learned District Court Judge's first impression is, in all the circumstances, preferable to his final decision.

I therefore propose to quash the sentence imposed in the court below and substitute a sentence of nine months non-residential periodic detention. The Appellant is to report to the periodic detention centre at Hamilton at 6 p.m. on Friday, the 30th March, 1984, and thereafter on such number of occasions in each week as may from time to time be specified by the Warden. I have considered whether I ought also to impose a fine in view of the seriousness with which I regard any assault or obstruction of a police officer, particularly in the context of tavern brawls, but again with some hesitation I have decided in this case, in view of the difficulty the Appellant has had with employment,

and the fact that he is now employed on the Salvation Army work scheme at, no doubt, a modest wage, not to impose a fine in addition.

W. Hamilton

Solicitors:

McCaw, Lewis, Jecks, Hamilton, for Appellant.

Crown Solicitor, Hamilton, for Respondent.