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IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

M.319/84

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BETWEEN      JONATHAN WILLIAM TATE

Appellant

A N D      THE POLICE

Respondent

Hearing:      13 July 1984

Counsel:      Carolyn Risk for Appellant  
                 B.M. Stanaway for Respondent

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ORAL JUDGMENT OF HARDIE BOYS J.

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This appellant was hired to collect a debt from a person living in a remote part of the West Coast. He went across there accompanied by two other persons and carrying a baseball bat, because, he said, the person who had engaged him had warned him that the alleged debtor was a gun collector and unstable and so he thought he needed to take measures for his own protection. He is apparently a man of some considerable dimensions, 6'8" or thereabouts tall, and very broad, and one therefore wonders why he would need a baseball bat to protect himself from another man. One wonders too what use a baseball bat would be if someone were, as he feared, going to shoot him with a rifle. In any event he went to the house with the baseball bat down the back of his trousers. The alleged debtor was not at home. When the debtor did appear the

appellant arrived and certainly at some stage during the confrontation that followed he had the baseball bat in his hand. There is a difference between the summary of facts put before the District Court Judge and what counsel has put to me today. In between I think is the account set out in the probation report.

The police summary asserts that the appellant approached the complainant threatening him with the baseball bat and that because of that the complainant took a rifle which was unloaded and as a consequence the appellant put his bat down. The appellant through counsel today suggests that it was the complainant who produced the gun first. But that explanation does not really account for the fact that he felt it necessary to produce the gun, nor does it indicate how the baseball bat got into the appellant's hand and what he did with it before he laid it down. The District Court Judge took a serious view of the case having regard to the isolated area, the time, which was evening, the defendant's physical size, his possession of the bat as a weapon - and it must be noted that is the charge to which in essence he pleaded guilty - and the clear implication of immediate violence if his requirements were not met. On that basis he sentenced the appellant to six months' imprisonment on the charge relating to the weapon and one month's imprisonment on a charge of assault, which was a relatively minor thing occurring as the appellant left.

The appellant has a long history of fraudulent behaviour, and is described in his probation report as an

apparently compulsive "con man" who cannot resist manipulating the truth. Therefore one is tempted to the view, particularly as it does not seem to have been challenged in the District Court, that the police statement of facts might be the more accurate one. This was certainly a stupid thing for this man to have done, at the very least. It was a frightening thing to have done at the worst. Indeed it is reminiscent of the kind of stand-over tactics one is familiar with from one's reading and viewing, but which one hopes not to see happen in this country.

The appellant has had a great many problems and seems to have come to grips with them in recent times and to be doing very well. It is a shame to see him in his present predicament. But if one takes the view of the case the District Court Judge took, and which I think he was entitled to take, and which certainly I am not disposed to differ from, then I do not think the sentence is manifestly excessive. It certainly was only the appellant's second conviction for an offence of violence - his problem has been fraud - but the Judge emphasised the need for deterrence in a case of this kind, not only so far as the appellant is concerned but generally because this sort of thing just cannot be accepted. Thus, despite his present personal circumstances, for which I have some sympathy and the very capable submissions put to me by Miss Risk, I have come to the conclusion that I cannot interfere with the sentence and the appeal must accordingly be dismissed.



Solicitors:

Saunders & Co, CHRISTCHURCH, for Appellant  
Crown Solicitor, CHRISTCHURCH, for Respondent.