

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

804

M.633/84

Warr

BETWEEN JAMES WARUAppellantAND CROWNRespondentHearing: 12th July, 1984Counsel: Vlatkovich for Appellant
Miss Shine for Crown

ORAL JUDGMENT OF SINCLAIR, J.

This offender pleaded guilty to a charge of indecently assaulting a female and, to say the least of it, the circumstances are such that the Court was justified in treating it in the more serious category.

This particular offender called at what was then the complainant's address looking for somebody who had apparently lived there at some earlier stage. But he went back three times and it was on the third time back that he pushed past the complainant and then indecently assaulted her for some two hours before leaving. Fortunately, despite the fact that there were some threats, she was not badly injured and in fact her injuries were described as slight. But he pleaded guilty and thus saved the complainant the concern of appearing in Court.

When one has a look at his past record he has two very minor offences so that he was really in the category of a first offender at the age of 27 years and he has been for the last 10½ years in the same job. In other words, he is a

person who normally is of some stability and there is no doubt that what he told the probation service as to the offence on this night was correct: namely, that he was affected by alcohol and that that led to a letting down of his defences. There was produced a reference from his employer which showed that he was industrious, honest and reliable and that he was one who was careful to keep away from disputes which involved the multi-national workforce, particularly having regard to his own racial background.

This was a difficult matter for the District Court Judge; on the one hand he had what was obviously a violation of a person's home and he had to balance that as against the public interest and the public outcry on indecent assaults, but at the same time he had to bear in mind and keep in balance what are sentences for this type of case today as compared with, for example, sentences imposed in respect of aggravated robberies. There are many aggravated robberies, which have a maximum sentence of 14 years, where the offender receives as little as 2½ years by way of imprisonment.

I cannot help but think, in looking at the sentencing notes, that the District Court Judge was somewhat incensed at the way this man forced himself upon the complainant. No doubt he had some right to feel that way, but as against that I cannot discern anywhere where he has given this man credit for pleading guilty, nor can I discern anywhere any real credit for his industrious behaviour for the previous 10½ years and, in fact, that seems to have been put entirely to one side. With the greatest of respect to the District Court Judge, if a person has shown stability, particularly

at this man's age over such a long period, it is something which he can call in aid at the appropriate time and this was, in my view, the appropriate time.

As Mr Vlatkovich has conceded, imprisonment had to be a term. I intend on this occasion to reduce the sentence to one of 15 months imprisonment.

P. D. King.

SOLICITORS:

Mr Vlatkovich, Auckland, for Appellant
Crown Solicitor, Auckland for Respondent