

SET. 3.

RMV GGH

IN THE HIGH COURT OF NEW ZEALAND

M. 47/84

GISBORNE REGISTRY

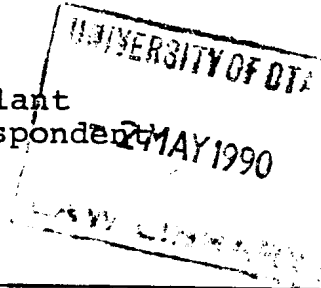
BETWEEN LIEF CLAUSEN

APPELLANT

A N D THE POLICE

RESPONDENT

Hearing: 12 November 1984
Counsel: A. McDonald for Appellant
T.G. Stapleton for Respondent
Judgment: 12 November 1984



ORAL JUDGMENT OF THORP J.

This is an appeal brought against a sentence of 18 months imprisonment imposed in the Gisborne District Court on 5th September 1984 on a plea of guilty to a charge of assaulting a police constable with intention to obstruct him in the execution of his duty.

The penalty cannot be considered without recognising that on the same date and in the course of the same hearing, the sentencing officer considered and determined penalties for other offences relating to this and occurring on the same afternoon at Te Araroa. His duty was to accordingly assess and to impose a penalty which appropriately represented the response made by the Court to the totality of offending.

The Appellant was one of a number of young men who were excluded from the Kawakawa Hotel at Te Araroa because they were under age. As the Appellant himself not long before had been convicted for being on licensed premises as a minor, he can have had no doubt about the legal situation. The licensee, being unable to cope with the combined force of the group sought the assistance of the sole charge constable at Te Araroa. He and the constable succeeded after what appears to be some little time and persuaded the group to leave the hotel.

It would seem that had they desisted at that point that would have been the end of the matter. The Appellant chose not to do so. He proceeded to kick his way back into the hotel through a locked door, seeking out and assaulting the police constable with a length of chain. He succeeded in forcing the officer to the floor. Fortunately other patrons of the hotel intervened at that stage and the Appellant was conducted from the premises before any injury had been suffered by the constable. Even then however, he indicated his total lack of recognition of his requirement to observe the authority of the police by getting into a brawl with reinforcements brought in to arrest him. In addition to the principal offence for which he was sentenced he was also sentenced on charges of resisting another police constable, and causing intentional damage to that man's uniform and watch.

I am somewhat in agreement with the proposition made by Mr McDonald that the sentencing Judge may have believed at the time that he imposed the sentence he did, that the Appellant at the time he assaulted the officer was then supported by one or more of his companions. That belief is not expressed in his reasons for sentence, but seems to have been in his mind from his description of the actions of the group appearing at the top of p. 2 of his reasons for sentence.

For that reason, and that reason alone, it seems to me necessary that I consider the appropriateness of the sentence imposed de novo, rather than by the normal Appellate process of considering whether or not it is shown to be manifestly excessive.

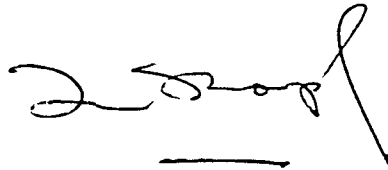
The need which the sentencing Judge noted of endeavouring to protect police and other law enforcement officers who have to carry out their duties alone, that is without the assistance of other officers, is one which has particular significance in this district, and certainly deserves every bit as much recognition in this Court as it was given in the District Court.

The totality of offending takes this episode well

beyond a momentary loss of temper by a young man who has had too much to drink. It is an example of continued violence and repeated violence. If the full picture of that day's events is taken into account, it must call for a significant term of imprisonment to be imposed, notwithstanding the youth of the Appellant. One can hardly ignore the fact that the majority of attacks on policemen throughout this country are made by men his age or younger.

In my view the penalty imposed in total was stern, but the circumstances called for a stern penalty. Looking at the matter de novo, I do not believe that anything less than the total penalty imposed would be appropriate.

The appeal will be dismissed.

A handwritten signature in dark ink, appearing to be 'J. S. P.', written in a cursive style. Below the signature is a short horizontal line.

Solicitors:

Chrisp & Chrisp, Gisborne, for Appellant
Crown Solicitors Office, Gisborne, for Respondent