

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.1431/84

1593

BETWEEN F. _____ A _____

Appellant

AND NEW ZEALAND POLICE

Respondent

Hearing: 11th December, 1984

Counsel: Mr Edwards for Appellant
 Miss Shine for Respondent

ORAL JUDGMENT OF SINCLAIR, J.

This appellant appeals against a term of imprisonment of six weeks on a charge of common assault. The circumstances are not the usual which come before this Court in relation to this type of offence and while this Court often finds itself very reluctant to differ from a sentence imposed by an experienced District Court Judge, on this occasion I intend to differ from the course of action which he felt he should follow. I do so for a number of reasons: Firstly, today I think I had put before me matters which were never put before the District Court and which throw the actions of the Appellant into a different light; secondly I am of the view that too much emphasis was placed on the deterrent aspect of this offence having regard to its background; thirdly, from the sentencing comments little or no regard was had to the personal circumstances of the Appellant.

I am satisfied that this whole episode was brought about by the husband's conduct, he having consumed too much liquor

which brought about a state of tension in the household. The wife believed that circumstances had reached such a stage that she needed police intervention and she was somewhat annoyed and upset that when the Police arrived the advice given was that it was she who should move out of the house instead of the husband. One can understand her frustration when she was really the one who was trying to keep the household and home together. In a fit of temper, and that is all that it was, she went to the kitchen, grabbed a knife and made some gesture with it which has had a more sinister connotation put upon it than I think the circumstances demand.

What has been overlooked, and I think ought to have been taken into account in this woman's favour, is that there was provocation in relation to the situation; she somewhat understandably lost her temper. But what is more important is that she is a first offender and a mother of two young children and she is an asthmatic. There is no doubt that the trauma of losing their mother to prison for six weeks on what really is a minor assault would have been traumatic and the Appellant herself is entitled to call in aid her previous good character to support her on the occasion of a first offence.

In all the circumstances I am of the view that in this case, despite what the District Court Judge said, a term of imprisonment was not warranted. I am also of the view that she does not require any assistance from the Probation Service and that the matter may now have been resolved by the fact that the husband has hopefully seen the light of day and has decided to reform. If he has not then he ought to hang his

head in shame. I think the matter can be dealt with by giving a suspended sentence so as to see whether these two people can get along together and behave in an ordinary way with the assistance of the Minister who is at present here in Court.

The sentence of imprisonment is vacated and the Appellant is ordered to come up for sentence if called upon within a period of 12 months.

P. D. King

SOLICITORS:

Edwards & Co., Auckland for Appellant

Meredith Connell & Co., Auckland for Respondent