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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.1/84

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BETWEEN: LOUISE TONI TE AROHA
BOWMAN formerly of
Hawera, Beneficiary
Appellant

A N D: THE POLICE
Respondent

Offence: Assault on female (2); Assault (1); Intentional Damage
Dealt With: 22 November 1983 At: Hawera By: Dalmer DCJ
Sentence: 7 months Imprisonment (cumulative)

Appeal Hearing: 16 February 1984

Oral Judgment: 16 February 1984

Counsel: Miss P Mills for appellant
C Q M Almao for respondent

Decision: Appeal dismissed

(ORAL) JUDGMENT OF BISSON J.

On 22nd November 1983 this appellant was convicted and sentenced to imprisonment for a period of five months on two charges of assault, committed on 4th October 1983. On the charge of intentional damage she was sentenced to imprisonment for a period of 3 months, to be served concurrently. On the remaining charge of assault, committed on the 20th October 1983, she was convicted and sentenced to imprisonment for a period of 2 months, cumulative on the sentence of 5 months - amounting to 7 months imprisonment all told. From those sentences she has appealed, on the grounds that the cumulative sentence of 7 months imprisonment was excessive.

Miss Mills has submitted, in support of the appeal, that one assault was in the nature of a general melee, and that

the other assault arose out of some racial tension, in which the appellant may have acted to some extent in self-defence. It was advanced that she has a child to look after and improved housing accommodation is now available, and that she is anxious to have a prohibition order made against her as she recognizes her alcoholic problem. So far as the elements of the offence are concerned, the learned District Court Judge refers to having listened to long, involved explanations from counsel as to the incidents in question, but that at the end of the day he was still left with the admitted three assaults, two of them on females and one charge of intentional damage.

Mr Almao has pointed out what I accept as an aggravating feature of these assaults - namely, that they were committed in private homes, and another factor is that in the case of one assault elderly people, 74 and 75 year of age, were the complainants.

The appellant clearly has an alcohol problem, which she accepts now, and is taking an Alcoholics Anonymous course or some such course at Arohata while she is imprisoned there. The Probation Officer's report, as the learned District Court Judge said, makes gloomy reading. It concludes with a paragraph that :

"Soon to turn 19 years of age, (the appellant) continues to be unpredictable and volatile. She is considered unsuitable for Community Service and past periods of Probationary supervision have been met with a nil response. It would seem that only age will lessen the frequency of her offending."

The appeal is not that a term of imprisonment is inappropriate, but that the cumulative sentences were excessive. However taking into account that there were quite unrelated assaults committed on different dates, I am not satisfied that it has been proved that the sentences imposed were clearly excessive, and because of the circumstances already mentioned, the appeal is dismissed.

W. Binney