

NZLR

17/12

X

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M.No.1239/84

1563

BETWEEN

C

Appellant

AND

THE POLICE

Respondent

Hearing: 30 October, 1984.

Counsel: S.P. Kelly for Appellant.  
D. Jones for Respondent.

Judgment: 30 October, 1984.

(ORAL) JUDGMENT OF VAUTIER, J.

The appellant, C following pleas of guilty to such charges was convicted in the District Court at Auckland on 23 August, 1984 on two charges of common assault brought in terms of s.9 of the Summary Offences Act 1981 and one charge of wilful damage brought in terms of s.11 of that Act. In respect of the charges of common assault he was fined \$750 and \$500 respectively and in each instance it was directed that \$100 out of the fine should be paid to the respective complainants. On the charge of wilful damage he was convicted and fined \$100 and ordered to pay \$75 in compensation. He was also required to pay certain Court costs.

The appellant was unrepresented at the hearing in the District Court but was informed of his right to seek legal aid and elected not to do so. The record shows that the appellant, on being invited to address the Court, took issue to some extent with the facts as stated in the summary so that the Judge had

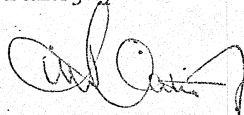
the situation in that respect before him. Initially, on the hearing of this appeal before me, counsel on behalf of the appellant referred to contentions which the appellant wished to put forward as to the facts surrounding the assaults and it was clear that these submissions would involve consideration of a substantially different factual situation from that referred to in the summary. I intimated that that kind of situation could only be dealt with by the matter being remitted if thought fit to the District Court so that evidence could be heard and the prosecution given the opportunity of calling evidence in rebuttal. The appellant, present in Court, elected not to pursue an application for the matter to be dealt with in this way and the appeal accordingly proceeded on the basis of the facts as stated in the summary presented to the District Court.

It was submitted that even on the basis of such facts the fines were manifestly excessive in all the circumstances having regard to the appellant's previous unblemished record and the situation disclosed that the matter was initiated through the appellant wishing to go to the assistance of a friend who appeared to be involved in some altercation with the complainants. The situation is that these two assault charges were offences in respect of which the maximum penalty prescribed is six months imprisonment or a fine of \$2,000. The intentional damage charge was one in which the maximum penalty fixed is three months imprisonment or a fine of \$1,000. The penalties imposed must, of course, be considered in the light of the maximum penalties thus laid down. It has to be noted, also, that the appellant was at the time aged 36 and the complainants were young persons

and furthermore on the basis of the facts as stated in the summary they were attacked in quite a vicious way while actually in their vehicle and endeavouring to leave the scene altogether. There was, in these circumstances, clearly no occasion for any assistance whatever to be provided for the friend of whom the appellant spoke and, furthermore, the Court must take note of the fact that one of the young boys attacked was stated to have had nothing to do with the whole situation, although that fact again was one disputed by the appellant.

The Judge, of course, had to view this matter in the light of the situation pertaining in this city over recent times where senseless acts of violence are continually occurring in the community and where sentences of imprisonment are clearly frequently required in order to act as some deterrence. This appellant, I think, must be regarded as having been treated comparatively leniently by the fact that he was dealt with by way of fines only for offences of the kind described in the summary. Certainly I am not able to conclude that the level of the fines was such as to indicate that the Judge went outside the limits of his discretion.

The appeal must accordingly be dismissed.



SOLICITORS:

M.A. Shanahan, New Lynn, for Appellant  
Meredith Connell & Co. Auckland for Respondent.