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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.379/84

1018

BETWEEN

CONNOR

Appellant

A N D

THE POLICE

Respondent

Hearing: 1 August 1984

Counsel: W.J. Woods for Appellant
B.M. Stanaway for Respondent

ORAL JUDGMENT OF COOK J.

The appellant pleaded guilty to a charge of common assault. It appears that in the course of a fight in a bar room the appellant ran across the room with a large glass in his hand and, in the words of the summary of facts, "smashed it into the face of the complainant". This caused a circle of lacerations. When questioned the appellant said that he saw his brother in the brawl but could not remember what happened after that and that he was intoxicated at the time.

The District Court Judge before whom he came for sentencing recognised that the action was completely out of character for the appellant. He spoke of the good references as to character and the appellant's industry and ability to get on with others. He noted that the appellant was in full-time employment and had done a lot for the community, and that there

were no prior offences. He regarded the matter as too serious for a monetary penalty, however, and referred to a case which came before the Court of Appeal where a sentence of six months' imprisonment was upheld. There the charge was one of injuring in such circumstances that if death had occurred the defendant would have been guilty of manslaughter which is of course a much more serious charge than the present one. The District Court Judge then imposed three months' imprisonment stressing the importance of a deterrent sentence.

Counsel for the appellant has gone through the facts. He has suggested that the appellant saw his brother involved in this brawl; that he merely punched the complainant without fully realising that the glass was in his hand, and he has mentioned other cases, which it is suggested were of a somewhat similar nature where fines have been imposed. For the police, Mr Stanaway has stressed that the appellant pleaded guilty and thereby accepted that he intentionally struck a blow; that it is clear that that blow was with a glass in his hand. That he intervened when efforts were being made to remove his brother, a removal which seems to have been proper in the circumstances. Counsel has also told me that the statements of off duty policeman at the time give justification for the statement in the summary of facts that the glass was smashed into the face of the complainant. I cannot decide that, but I do not think I can regard it purely as a punch without realisation that the glass was there.

It has been submitted that it was a serious assault and

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that a serious view must be taken of this type of incident. That is certainly correct. Any assault of this nature is to be deplored. Particularly something which happens during a drunken brawl and in many cases imprisonment will be appropriate. On the other hand the appellant is 21. He is a first offender and he has a very good report indeed from the probation officer. I think possibly the District Court Judge, not having the Court of Appeal decision before him, may have overlooked the serious nature of the charge to which it related. In any event, having regard to the matters which I have mentioned in favour of the appellant, I think imprisonment in this case is not appropriate. Accordingly, the sentence is quashed and in place of that is substituted a fine of \$750 and I direct that of that amount \$350 be paid to the complainant.

A handwritten signature in cursive script, appearing to read 'Fraser', is written in the right margin of the document.

Solicitors:

Fraser, Venning & Crerar, CHRISTCHURCH, for Appellant
Crown Solicitor, CHRISTCHURCH, for Respondent.