

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.52/84

154.

BETWEEN: ANTHONY TREVOR EASTON
formerly of Tauranga,
LandscaperAppellantA N D: THE POLICERespondentOffence: Assault
Dealt With: 31 January 1984 At: Waihi By: Green DCJ
Sentence: Imprisonment 6 monthsAppeal Hearing: 28 February 1984Oral Judgment: 28 February 1984Counsel: Miss P A B Mills for appellant
C Q M Almao for respondentDecision: APPEAL DISMISSED

(ORAL) JUDGMENT OF BISSON J.

This is an appeal against sentence.

The appellant pleaded guilty to a charge that with two other persons he assaulted Mr at Waihi on the 24th June 1983. The other two persons mentioned in the Information have yet to be dealt with, so this Court is faced with considering the appellant's case on its own merits alone. The appeal does not therefore raise the question which might have arisen as to any disparity in the sentences. The assault took place in the complainant's home when quite a large group - about 20 - went there to have a confrontation with the complainant, and apparently with the intention of assaulting him because they took weapons with them, such as pieces of wood, and indeed assaults on the complainant did take place as a result of which he

suffered injuries being described as follows: he suffered a split lip requiring stitches, bruising to his back and head, and his arms and legs were badly bruised. The serious aspect of this case is that the appellant was prepared to join a large group to enter the complainant's home and there to deliver this assault to him.

For the appellant, Miss Mills has submitted that there had been some previous association between the complainant and the appellant when the complainant had actually made a threat to kill, but that was a matter which might have been dealt with by the Police because they were aware of that situation. But it was not until three weeks later that the appellant returned to the locality and it was then, in quite a detached way, that this group took it on themselves to deliver what they may have thought was justice to the complainant. However, in doing so they clearly took the law into their own hands, and it is that aspect of the matter, coupled with the carrying of weapons, coupled with the entering of a private home, and then delivering an attack in which the complainant was injured, that presents a very serious case and, I hope, an unusual case to the Court. It is unfortunate that the appellant allowed himself to become involved in this matter, because he has no previous convictions involving violence and indeed his last appearance before the Court was as long ago as January 1980 for the possession of cannabis, when he was fined \$100.00. He has not previously been sentenced to a term of imprisonment, and on this occasion the Probation

Officer's report suggested that the offence was out of character and might be met with a fine. The appellant is working and Miss Mills said he could pay a fine if given time. But it is noted that he already has a debt of \$4200.00 in respect of a motor-cycle which was stolen and not insured. But in any event the appeal is not on the basis that a term of imprisonment is inappropriate, but that the sentence of 6 months imprisonment is excessive.

The learned District Court Judge, in sentencing the appellant, said that he considered the offence to be nothing other than thuggery -

"for a group of people to go to someone's home, armed, and there beat him up is nothing other than thuggery, and it doesn't really matter what he had done because no conduct by another citizen deserves for a large group of people to go, armed, to commit mayhem."

He then went on to say :

"It seems to me that you were probably the ringleader in the whole thing..."

Miss Mills, in presenting the case for the appellant, has stressed that that was a wrong assumption on the part of the learned District Court Judge but, from a statement which the appellant made to the Police after this event, he described himself as being "the boss" although not in the true sense. Even if one is to discount his role in this matter, on his own admission he assaulted, by punching and kicking, a man who was already on the floor injured, and he became a party to the whole shocking incident.

Violence of this sort must be met with a deterrent sentence which marks the condemnation of the Courts and reflecting public feeling so far as violence in the community is concerned, and the appeal is accordingly dismissed.

Ch. Birman J.

Solicitors:

Clark & Gay, Waihi, for appellant
Crown Solicitor, Hamilton, for respondent