

BETWEEN

DOWNS

Appellant

A N D POLICE

Respondent

Counsel: G. Boot for Appellant  
C.O.M. Almao for Respondent

Hearing and  
Judgment: 6 June 1984

---

ORAL JUDGMENT OF GALLEN J.

---

On 2 December the appellant was convicted on a charge of indecent exposure after a defended hearing. On 21 December 1983 he was sentenced on that charge to a term of imprisonment. I have a good deal of sympathy for the learned District Court Judge in dealing with the situation with which he was faced. As is not uncommon in this kind of offending, the appellant had been convicted on previous occasions. He had previously been put on probation; fined; had a suspended sentence; twice sent to non-residential periodic detention - and the learned District Court Judge no doubt felt that the remedies which were open to him were limited by the past response or rather lack of

it by the appellant to the penalties which had been imposed upon him.

In addition as Mr Almaso has said, it was not a particularly pleasant offence. The appellant had chosen to expose himself in a place where he must have been aware that there were likely to be schoolgirls in the vicinity and indeed there were. The public is entitled to be protected against behaviour of this kind and in particular children are entitled to be protected. They should have access to the public streets without the possibility of being confronted with this sort of situation. Nevertheless having said that, there is material in front of me which was not before the learned District Court Judge. The report has been obtained from a psychologist who has had the opportunity to interview the appellant to consider his past and to assess his likely response to treatment which is available. In that report, he indicates that in spite of the long history of offending the appellant has not previously had any very significant psychological or psychiatric treatment or advice. While it is important that the public should be protected from behaviour of this kind and persons who have a disposition to indulge in it must be prevented from doing so, it is more important still to the public that this kind of behaviour should not be repeated. The learned District Court Judge no doubt felt that the only course open to him to endeavour to do that was the imposition of a prison sentence. The report available to me indicates that there is an alternative

as the appellant is already undergoing treatment and that there is a reasonable prospect of this treatment being successful and of his responding to it.

I am concerned that a period of imprisonment at this stage will interrupt that treatment and indeed be a change which will undo the good work that has already been done. Under those circumstances, I am prepared to allow the appeal and to substitute the term of probation for the term of imprisonment which was previously imposed. The term of probation will be to ensure that there is sufficient supervision to make sure that the appellant continues with the course of treatment which is available to him and does what he is required to do by the psychological advisors. I note that such a suggestion was made in the original probation report. At the same time, I am not unmindful of the matters raised by Mr Boot and indeed referred to in the report itself where there is an indication that there is a place for punishment of this type of behaviour. It is the kind of behaviour which offends the community and it is therefore appropriate that there should be some recompense to the community and the best way to do that in my view, is to ensure that the appellant meets his debt to the community by carrying out a degree of community service.

The appeal against sentence will therefore be allowed. The appellant is sentenced to a term of probation for 1 year. He is also sentenced to perform 100 hours of community service as some recompense to the community for the trouble to which it has been put and the offence which has been caused. I note that the appellant consents to that particular penalty.

*RB Balk*

Solicitors for Appellant: Messrs Boot and Poose, Hamilton

Solicitor for Respondent: Crown Solicitor, Hamilton