

BETWEEN

DICK

Appellant

A N D      THE CROWN

Respondent

Hearing:      4 May 1984

Counsel:      K.A. Flood for Appellant  
                  B.M. Stanaway for Respondent

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(ORAL) JUDGMENT OF COOK J.

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The appellant came before the District Court for sentencing on two charges, one of assaulting a woman and the other of fighting in a public place, a tavern. In respect of the first charge, he was sentenced to six weeks imprisonment and he was discharged without penalty on the second.

From the summary of facts which accompanies the file, it appears that the appellant had some argument with the complainant and, in the course of this, punched her in the face with the result that she was knocked to the ground. Another man at the tavern remonstrated with the appellant, a fight developed and this appears to have turned into a brawl with a number of people involved.

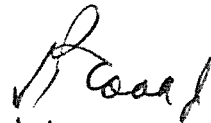
The District Court Judge took a serious view of the assault. He spoke of it as a very serious disturbance in the tavern concerned, in which quite a number of people became involved and he considered that he must have regard to the deterrent aspects when imposing sentence. He noted that the

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appellant, as recently as October of last year, had been convicted of an assault and that this offence, in respect of which the appeal is now brought, occurred only six weeks later. He considered it his duty to impose a sentence of imprisonment.

For the appellant, counsel has drawn my attention to the fact that a Probation report, which had been prepared a few days previously in respect of another charge for which the appellant was sentenced to non-residential Periodic Detention, was not before the District Court Judge, but that a supplementary report only, prepared for the second sentencing, was there. Counsel submits that, had the District Court Judge had the full report, he might well have imposed further Periodic Detention rather than imprisonment. I had read both, however, before coming into Court, and it seems to me that the short report does make the most important point in the appellant's favour - that he has been making progress in Christchurch, away from Oamaru and past associations - so that was known to the District Court Judge and no doubt was something taken into account.

The appellant has not a good record. As the District Court Judge noted, there was the charge of assault not very long before and, generally, he does not have a good list. Despite the submissions made on his behalf, it seems that the District Court Judge was justified in deciding that it called for a short term of imprisonment and it is not possible for me to say that that is inappropriate. The appeal must be dismissed.

A handwritten signature in dark ink, appearing to be 'P. Reed', is located in the lower right quadrant of the page.

Solicitors:

Layburn, Hodgins, Rooney & Quirk, Christchurch, for Appellant  
Crown Solicitor's Office, Christchurch, for Respondent.