IN THE HIGH COURT OF NEW ZEALAND
~~CHRISTCHURCH~~ REGISTRY

M.41/84

BETWEEN ALISTAIR JOHN KING

Appellant

A N D POLICE

Respondent

Hearing: 19 June 1984

Counsel: H.C. Matthews for Appellant
N.W. Williamson for Respondent

ORAL JUDGMENT OF HARDIE BOYS J.

This is an appeal against sentences of six weeks' imprisonment imposed on each of a charge of assault on a police constable in the execution of his duty, and of resisting a constable in the execution of his duty. The police were making inquiries in a public bar about a complaint relating to an earlier disturbance there. Everything was peaceful when they arrived, but when they approached the appellant he stood up and without any provocation struck a police seargent on the side of the face. Then in the attempt to arrest him there was a violent struggle in which apparently bar equipment was sent flying and during or after which the appellant suffered some facial injuries which appear from the photographs shown to me to have been quite severe. However they may have occurred, it seems obvious that the appellant reacted very violently to the

intervention of the police.

Mr Matthews informed me that the appellant maintains that these particular injuries were caused after he was taken into custody. The District Court Judge did not refer to the matter in sentencing, from which I think I am entitled to assume that it was not raised with him. In any event it seems to me in this particular case to be more appropriate for that matter to be pursued, if thought proper, by way of complaint to the police authorities rather than as a matter to be considered in assessing the appropriate sentence for what the appellant himself did.

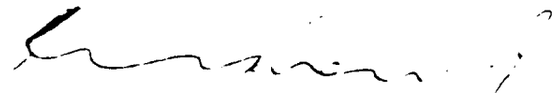
In fixing that sentence the District Court Judge referred to violence in the particular area, Gore, and of warnings that had been given from the Bench about it. He considered that a deterrent penalty was called for where an unprovoked attack was made on a police officer. I would agree with that as a general proposition and indeed it was not argued to the contrary, but rather it was submitted that the particular circumstances of the appellant ought to have prevailed over the deterrent aspect, at least to the extent of saving the appellant from a prison sentence. The appellant has a bad history of offending. He was convicted and sentenced to 21 days' imprisonment on similar charges in 1982, although I understand from Mr Matthews the circumstances there may have contained greater elements of emotional provocation. In the last two years the appellant has not offended and this may be due to the fact that he has settled into married life

with a wife and two children, and he has obtained employment under the P.E.P. programme with the Southland County Council. This employment has clearly brought out some of his potential and he has been doing very well at it. There is a letter on the file asking the Court not to allow the result of the present charges to interfere with that employment.

The difficulty is that if a sentence of imprisonment meant the end of that employment, the damage is now done and little is achieved by releasing the appellant now rather than at the end of his sentence, which is likely to be in the next couple of weeks. I therefore cannot see that great weight can be given to that factor now. In any event even if one were looking at the matter ab initio I would regard the need to protect the police and to impose a deterrent sentence in these circumstances as paramount. This sort of behaviour is intolerable and it is just as intolerable for someone who has a precarious employment situation as for someone whose employment situation is secure, or indeed for someone who has no employment. Some might think a sentence of six weeks imprisonment achieves little and on that basis it might have been possible to justify a longer term. The Judge clearly intended to give weight to such of the personal factors as were known to him, consisting mainly of the employment situation. I am not prepared to conclude that he was wrong in deciding that imprisonment was appropriate and that a short and sharp term of six weeks was the proper way to deal with this appellant. Accordingly, the appeal must be dismissed.

A matter of not a little concern is that this appeal, which was clearly against any sentence of imprisonment, was prepared and filed on the day the sentence was imposed 30 May; an application for bail was made that day and it was refused. If the effect of the sentence of imprisonment was, as might be the case, to deprive the appellant of his employment, then it seems to me with respect that it was not proper for the result which the appeal was designed to avoid being incurred nonetheless by the refusal of bail. One of the difficulties that can arise by granting bail to appellants sentenced to imprisonment is that by the time the appeal is heard, circumstances often can have changed considerably and this Court can be put in an awkward situation in determining what ought to be done, not so much on the basis of the circumstances as they existed at the time of sentence but as they existed at the time of the appeal hearing. If therefore a District Court Judge considers it inappropriate to grant bail (and circumstances where that is the case must, I suspect, be unusual), then it is essential that the appeal be heard very quickly. Indeed, even where bail is granted, in order to avoid the problems that can confront this Court there should be no delay in obtaining a hearing date. I was able to arrange to hear this appeal within 24 hours of being informed that it had reached this Court. Any Judge, I am sure, would do the same. I am therefore grateful to accept Mr Williamson's offer to inquire as to the cause of delay in this case, but I think it must be pointed out that it is surely the responsibility of counsel for the appellant in such circumstances to take all the steps he can to have the matter promptly dealt with. From the

Bench's point of view there should be no problem.



Solicitors

Bannerman, Brydone, Folster, Wills, Phillips & Co, GORE, for Appellant.
Crown Solicitor, CHRISTCHURCH, for Respondent.