IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY 2/8

M 341/85

BETWEEN BRIAN JAMES ELLIFFE

Appellant

729

A N D POLICE

Respondent

Hearing: 26 July 1985

Counsel: Mr Lee for appellant
Ms McDonald for respondent

Judgment: 26 July 1985

JUDGMENT OF HILLYER J

This is an appeal against sentence imposed in the District Court at Christchurch on 17 May 1985 by District Court Judge Patterson. The appellant was appearing before the District Court Judge on two charges, first that at Timaru on 20 April he waylaid and indecently assaulted an employee of the Hospital who had left for her home after completion of her work. Five days later in a bus depot at Christchurch he assaulted a female, which is a reduced charge, but nevertheless as the learned District Court Judge accurately described, a terrifying assault on a female.

The appellant has a history of sexual offences, going back for a number of years. He has been imprisoned for three months on a charge of indecently assaulting a female over the age of 16

years, and sentenced to 3 years imprisonment for the abduction and attempted rape of a woman.

In respect of the offences relating to this appeal, the learned District Court Judge imposed a term of imprisonment for the indecent assault of 2 years, and for the assaulting a female charge, imposed a term of imprisonment of 6 months; those terms to be concurrent.

I have had the opportunity of reading the careful, thoughtful and sympathetic report made by the consultant psychiatrist which has been put before me, and it is clear that as with so many of these offences, sadly the origins go back into the childhood of the appellant. He was ill treated himself and now has serious psychiatric problems. These are exacerbated understandably enough, when he drinks. It is in those circumstances he seems to lose control of himself. One can have sympathy for him and understand the reasons why he is like he is, but the community must be protected against people like this.

The imposition of a term of imprisonment is in my view, as indeed Mr Lee acknowledged, necessary and appropriate. Mr Lee did however, suggest that the term should be somewhat reduced, perhaps by making the 6 month period not concurrent with the 2 years. I do not consider that the sentence is in any way manifestly excessive. To toy with it by reduction of a small amount would be quite inappropriate. I am not here to

determine what I would have given the appellant, but whether sentence imposed by the District Court Judge is manifestly excessive.

I am of the view it certainly was not, and indeed it seems to me to be an entirely proper sentence. I will therefore dismiss the appeal.

I do note however, that the psychiatrist suggests that a recommendation could be made that the appellant be referred to her waiting list at Paparoa Prison for individual psychotherapy and/or to the waiting list of the Justice Department's psychologists there. Mr Lee comments, I have no doubt accurately, that the work load of the psychiatrists is a heavy one. Nevertheless, clearly in Dr Hewlands' view, the appellant does need assistance, and I make the recommendation that the doctor has suggested.

P.G. Hillyer J

Solicitors

R.A. Young Hunter & Co for appellant

Crown Law for respondent