

31/10

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

AP 266/86

BETWEEN

HIRAMA

Appellant

1533

AND

POLICE

Respondent



Hearing: 17 October 1986

Counsel: Mrs Prasad for Appellant  
Earwaker for Respondent

Judgment: 17 October 1986

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(ORAL) JUDGMENT OF THORP J

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This is an appeal by Hirama against a sentence of 21 days imprisonment imposed upon him by the District Court at Papakura on 18 August 1986 following his entry of a plea of guilty to one charge of assault. On his behalf Mrs Prasad has argued that the sentence imposed was manifestly excessive and inappropriate.

The accused is a married man with three children. He and his wife separated 12 months ago. A little under 12 months ago he attended his home and there assaulted his wife, I am told by counsel in an impulsive way. He was convicted of the quite serious offence of assault on a female, sentenced, and directed to pay a fine of \$500 which in my opinion was a modest penalty for the particular offence. He then behaved himself, which on various previous occasions he had not, for a further period until the occasion 13 August 1986

when he returned to the house his wife and children occupy after having obtained her agreement to his visiting the house. There they got into an argument. When she sought to persuade him to go and was unsuccessful, she attempted to ring the Police and he punched her in the eye with a closed fist.

The view taken by the learned Trial Judge was that he required a short sharp shock. Without seeking to obtain a pre-sentence report, he administered this by imposing the relatively unusual penalty of 21 days imprisonment.

It was a decision I find easy to understand and it certainly cannot be regarded as a manifestly excessive penalty. The only question is whether it was an appropriate penalty.

The decision of the Court of Appeal in R v S.J. Spring (CA 221/85 decision 18 November 1985,) emphasised that Courts which are contemplating imposing terms of imprisonment should only do so without obtaining the benefit of pre-sentence reports in most unusual circumstances, and then only if it is intended that the term of imprisonment imposed should be a very short one.

The present circumstances do not easily qualify, in my view, as "most unusual" ones. In my view the result is that this Court, which has had the benefit of the detailed submissions and the sort of advice and information which the District Court would have had if a pre-sentence report had been called for, is not in the usual appellant situation, but is entitled to look at the situation anew.

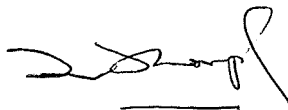
On the information given me, the cause of the appellant's recent misconduct has been his

inability to work out his domestic situation. He has, perhaps in part motivated by the penalty hanging over his head, accepted counselling. In my view unless he continues to do so the likelihood of some further unsatisfactory encounter between this man and his former wife and family cannot be discounted. It is also fairly well recognised now that short terms of imprisonment have very limited deterrent effect.

On the information now available to me I take the view that a more appropriate penalty would be one of a fairly lengthy time of periodic detention tied to a lengthier period of supervision with special conditions as to counselling to be undertaken at the request of the probation service.

The fact this appeal is being allowed will I hope not leave the appellant in any doubt about the likely result of any further inability on his part to control himself when he is endeavouring to work out family arrangements.

The appeal will be allowed. In lieu of the sentence of 21 days imprisonment there will be a period of six months periodic detention, first attendance at the Periodic Detention Centre at Papakura tonight at 6.30pm, the maximum daily period not to exceed nine hours per day. In addition he will be sentenced to a term of supervision for 12 months on the statutory terms and the further condition that he is required to attend such counselling as his probation officer may direct.

A handwritten signature in black ink, appearing to be 'D. J. Price', written over a horizontal line.

Solicitors:  
Price, Vaulk, Brabant & Hogan for Appellant  
Crown Solicitor for Respondent