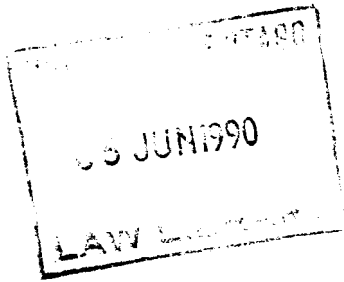


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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

for [unclear]
A.P. No. 67/87



BETWEEN GRANT DAVID SAMPSON

Appellant

A N D POLICE

Respondent

Hearing: 7 May 1987

Counsel: C. Ruane for Appellant
P. Shamy for Respondent

Judgment: 7 May 1987

ORAL JUDGMENT OF TIPPING, J.

This is an appeal against sentence by Grant David Sampson who at the age of 21 appeared before the District Court on a charge of he being a male assaulted a female under the Crimes Act.

The appellant was sentenced by the learned Judge to five months imprisonment; the maximum sentence for this type of offence being two years imprisonment. The sentence was imposed on 27 March 1987 and as at today the appellant, having been refused bail pending the appeal, has been in custody for a period of almost six weeks.

The circumstances were these. Outside a nightclub in the city the appellant grabbed the complainant by the arms. He is said to have thrown her against a fence and then dragged her along the fence causing what is described

in the Police summary as severe bruising and grazes to her left upper arm. This all took place on 6 March. There is in the file no medical report or other medical evidence.

The assault can be described as more than trivial but the injuries suffered by the complainant do not appear to have been serious in the long term. I am not by any means in saying that, minimising the seriousness of assaults of this kind.

Mr Ruane, who presented the submissions for the appellant in support of the appeal, made certain observations about the submissions that had been made by counsel, who was not Mr Ruane, in the District Court relating to the Criminal Justice Act and then submitted that a term of five months imprisonment was both inappropriate or manifestly excessive.

The appellant has an unfortunate history for offences involving violence. In 1985, August of that year, he was sentenced to pay a fine of \$300.00 for an identical offence of assault on a female. The year before in September 1984 he was fined \$150.00 on another conviction for assault on a female. He has offences of dishonesty in his previous record; theft, burglary and receiving. He has been sentenced in the past to corrective training and periodic detention.

Mr Ruane made the point that the learned Judge in the Court below had in effect for offences of violence leap frogged what Mr Ruane described as the periodic detention stage in the sentencing progression.

I am satisfied that for a third offence of assault on a female within a period of about three years the

the learned Judge was entitled to indicate to this appellant that conduct of this kind simply cannot be tolerated. He was entitled in my view to demonstrate that by imposing a sentence of imprisonment and if one puts it that way leap frogging the periodic detention stage in sentencing.

What, however, has given me considerable cause for thought is as to whether against that background and the relative seriousness of this assault it was necessary to sentence the appellant to a term as long as five months.

Parliament has directed the Courts that when sentences of imprisonment are imposed they shall be kept as short as is consonant with promoting the safety of the community; that appears in the Criminal Justice Act.

While I accept that this was a case for imprisonment in my view a term somewhat shorter than five months would have been sufficient to mark the gravity of the offence and to act as a warning to others that this sort of conduct simply will not be tolerated.

With great respect to the learned Judge in the Court below I am of the view that a term of five months was in these particular circumstances manifestly excessive. That sentence is quashed and in lieu thereof I impose a term of three months imprisonment. The appeal is allowed to that extent.

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