

12/27
IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY

13/9
AP 15/91

BETWEEN GRANT NGAERE HARRIS

Appellant

1664
A N D

NEW ZEALAND POLICE

Respondent

Hearing: 2 July 1991

Counsel: Q Reeves for Appellant
T C Brewer for Crown

Judgment: 2 July 1991

ORAL JUDGMENT OF ROBERTSON J

On 23 May Grant Harris was sentenced in the District Court at New Plymouth on four charges arising out of an incident which occurred on 27 April.

At about 7.30 that Saturday night, the appellant had gone to an address which was occupied by his former wife. With her at the house were their daughter, three teenage friends of hers and a male friend of the wife. Mr Harris entered the house and punched Mr Harvey, his former wife's friend in the head several times. When Mrs Harris tried to intervene Mr Harris struck her on the jaw with his fist and she fell to the ground. The two adults were able to flee and ring the Police from a neighbour's house. The four teenagers remained in the house

where the appellant went quite berserk, overturning a fridge, smashing a hole in the top of the dining table, pushing over the television, video, heater, chairs and some ornaments.

His daughter tried to calm the rampage while her teenage friends locked themselves in the bathroom. He was located by the Police a few minutes later at his own address and when returned to the New Plymouth Police Station, indicated on more than one occasion his intention to go round and kill his former wife.

Damage to a total of just on \$600 was done by this man who was said to have been moderately intoxicated. He told the Police that he was frustrated at the difficulties involved in resolving outstanding problems.

Neither of the assault victims required medical treatment.

The learned District Court Judge was of the opinion that s 5 of the Criminal Justice Act applied and upon that basis sentenced the appellant to 12 months' imprisonment on the charge of assault on his wife on which he was liable to four years' imprisonment; he was sentenced to six months on the threatening to kill; two months on the assault on Mr Harvey and two months on the intentional damage. On that charge he

was also ordered to make reparation.

His behaviour that night was intolerable. This man is 41. He is a grown adult and this type of behaviour is abhorrent to any civilised community.

He had a bad period with the authorities in his younger days. He appeared in the Courts from the time he was 15 until he was in his mid twenties on a variety of offences and as recently as 1978 on a driving matter. He has been out of any trouble for over 12 years. He has never been to prison. There was nothing in his background which called for any special approach by the Courts.

Too often we use the phrase domestic violence to describe assaults which occur within families as if they are somehow less serious than other assaults. In my judgment they are probably more serious because the home is the one place where people ought to be secure. I reject any suggestion that because there had once been a relationship between this man and this woman, the matter should be viewed in a different way.

Section 5 of the Criminal Justice Act provides that violent offenders are to be imprisoned where they are convicted of an offence punishable by imprisonment for a term of two years or more and the Court is satisfied that in the course of

committing the offence the offender used serious violence.

The learned Judge found both those requirements present. There is no question as to the existence of the first. I do not see where the second criteria is fulfilled. This was unacceptable, inexcusable and cowardly violence, but no medical attention was required. Without the assistance of reasons for such categorisation I am unable on the material before me to see how it can appropriately be labelled as serious violence.

I am therefore of the view that the sentencing took place upon a mistaken premise and that the other provisions of the Criminal Justice Act which urge Courts not to imprison are to be given greater weight.

It appears that having reached the conclusion that there was such a misapprehension, the appropriate course is for me to re-look at the matter in light of the submissions which I have now heard.

Mr Brewer for the Crown, while not conceding that it was not serious violence, accepted that the 12 month term would have to be viewed as being at the highest end of the scale for offending of this sort.

Where there is offending of this sort which encompasses

four different facets which are interrelated and yet separate, the Court in my judgment needs to ensure that the totality principle is kept in mind. Notwithstanding the provisions of s 7, and bearing in mind that one of the offences is a property offence and therefore s 6 applies, but accepting that I am not bound by s 5 and its presumptive requirements, I am of the view that the totality of offending here required a custodial sentence. A custodial sentence in my view is required in a case such as this to act as a clear signal to other frustrated and inebriated men that this is not the way to resolve outstanding problems. When a person becomes so self-centred as to create the intolerable situation which this man did, not only for his ex wife who is entitled to the dignity of her freedom, but also for his teenage daughter and her friends, a need for condemnatory and deterrent penalties exists to mark the fact that this sort of behaviour can never be acceptable.

The issue is, what length of term is required to make that point in light of the clear directions of the Criminal Justice Act? I have been exercised on the issue of comparability. It appears to me that a sentence of 12 months' imprisonment (for a person with no relative or relevant recent history) would be imposed for something of a more sustained and serious nature than what occurred in this case.

In my judgment the deterrent, condemnation and punitive

aspects can be met without a sentence as long as that. I do not overlook Mr Reeves' submission that this man is now intending to move away from New Plymouth. He probably should move away from New Plymouth, but first of all he must face the consequences of the intolerable way in which he behaved that night.

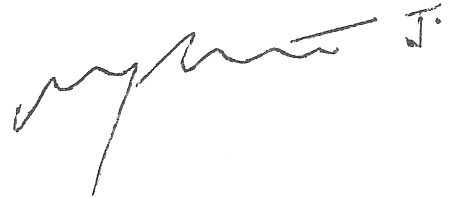
I have been exercised by the contents of the report provided in terms of s 17 of the Criminal Justice Act. The Court must be very cautious as to the weight given to a report of that nature where the person against whom such report is made does not have the opportunity to be heard or to even know of its existence.

In my judgment the overall interest of justice will be met by this man serving a total sentence of six months' imprisonment.

The appeal will be allowed in respect of the charge of assault on his wife, not because I do not consider it serious, but in order that the penalty is comparable with the degree of violence which actually occurred. The other penalties are matters which fall to be dealt concurrently and I do not interfere with the exercise of discretion of the District Court Judge in respect of those matters.

7.

The appeal is accordingly allowed to the extent that the effective sentence will be reduced by a period of six months.

A handwritten signature in black ink, appearing to be 'W. J. Gifford', written in a cursive style.

Solicitors

Reeves & Gifford, New Plymouth for Appellant
Crown Solicitor, New Plymouth for Respondent