

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP.195/91

BETWEEN: **VICTOR WAAMU**

Appellant

A N D: **THE POLICE**

Respondent

Appeal Hearing: 3 September 1991

Oral Judgment: 3 September 1991

Counsel: M Edgar for appellant
 Mrs S McAusland for respondent

ORAL JUDGMENT OF HENRY J

This is an appeal against a sentence of 18 months imprisonment imposed in the District Court at Papakura on 28 June 1991 in respect of a charge laid under s.193 of the Crimes Act 1961 of assault with intent to injure.

The general facts are not in dispute. The appellant had a relationship with the complainant, there was an argument between them and during the course of that the appellant pushed the complainant to the ground, did some damage to her motor vehicle (that incident being the subject of a separate count), and then later physically assaulted the complainant. He took her by the hair, the throat, and kicked her in a leg. As a result of this altercation the complainant struck her head against a steel railing. It is unclear whether that was as a result of a deliberate action by the appellant

intending to do that, or whether it simply occurred as a result of the overall incident. The complainant received some injuries, fortunately comparatively of a minor nature, consisting of swelling to the throat, bruising, and some lacerations. She was left with resultant headaches and some neck stiffness.

Appellant is 26 years of age. He does have some previous convictions, including two for assault but neither of which appear to be of a serious nature. There is a claim by him that this assault resulted from his reaction to some provocative words spoken to him by the complainant. Whether they were said and their actual nature is perhaps a matter of some dispute. The appellant pleaded guilty at an early stage to the charge, and he has expressed his remorse for his actions.

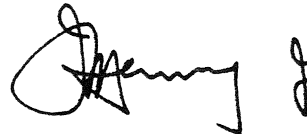
The important factors in my view here are that this was a premeditated attack, there was no weapon involved, the injuries to the complainant were, as I have said, comparatively minor having regard to the nature of the charge, and I think it can be accepted that there was some measure of provocation although of course it could not possibly excuse the conduct of the appellant.

When one takes into account the level of penalties imposed for the serious assault offences which come before this Court - and which frequently result in severe injuries as well as the use of weapons - I am persuaded that the term of 18 months imprisonment is manifestly excessive. I do not think there is any merit in the submission that the dictates of s.5 of the Criminal Justice Act should not have been invoked. It clearly applied,

and it was well within the Judge's discretion not to accept that the circumstances relied upon by Mr Edgar in his submissions justified a non-custodial sentence. Imprisonment was undoubtedly warranted.

Taking all factors into account I am of the view that a sentence of 9 months imprisonment is appropriate. The appeal will be allowed. The sentence of 18 months imprisonment is quashed and a sentence of 9 months imprisonment imposed in lieu thereof.

The appeal is also framed as being against the sentence of 1 month's imprisonment imposed on the wilful damage charge. There is no reason to interfere with that, and the appeal in that regard will be dismissed.



Solicitors:

M Edgar Esq., Auckland, for appellant
Crown Solicitor, Auckland, for respondent