

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

28/11

AP 272/93

**NOT
RECOMMENDED**

BETWEEN WALKER JEFFRIES
ROBERT RATU

Appellant

2480

AND THE POLICE

Respondent

Hearing: 14 December 1993

Counsel: Harvey Juran for appellant
Yelana Yelavich for respondent

Judgment: 14 December 1993

ORAL JUDGMENT OF TOMPKINS J

On 11 October 1993 in the District Court at Otahuhu the appellant, having pleaded guilty to a charge of assault on a female, was sentenced to imprisonment for 12 months and to supervision for 18 months on conditions relating to undergoing counselling and anger management programmes. He has appealed against the sentence, particularly against the length of the sentence of 12 months.

This is another case of domestic violence. The appellant and the victim had been living together in a de-facto relationship for some four years. On 3 October 1993 the appellant and the victim returned home at about 2.00 am. The appellant was intoxicated. As the victim got out of the car and moved towards their house, the appellant assaulted her by punching her in the face, pushing her to the ground, kicking her, dragging her by the hair, slapping her in the face, pushing her out the front door causing her to fall down the front steps, while at the same time verbally abusing her. No victim impact report was

provided in the District Court, but I am advised by Mr Juran - and this is confirmed by Miss Yelavich - that the victim in the court at the time of sentencing advised that she suffered a swollen nose.

Mr Juran, in my view rightly, accepts that s 5(1) of the Act applies and there were no special circumstances that would justify the court imposing a sentence other than imprisonment.

In support of his submission that the sentence was manifestly excessive he refers to a number of factors. The first is that the appellant made a full confession to the police at the time of arrest and pleaded guilty at his first appearance. The second is that the appellant is now genuinely remorseful for what he did. In that respect, the probation officer records that the appellant now realises that what he did was "terrible" and he was sorry to hurt his wife. Because he wants no more domestic problems, the appellant indicated to the probation officer that he would consent to seek counselling and is willing to participate in educational programmes to address anger and alcohol and drug problems. The victim has also confirmed that the appellant is sorry for what he did.

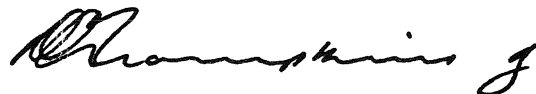
The third matter Mr Juran raised is forgiveness on the part of the victim and lack of serious injury to her. I have the advantage, which the judge in the District Court did not, of an eloquent letter written by the victim, dated 6 December 1993 pleading for the appellant's sentence to be made shorter and setting out in some detail her views about the appellant and the problems that the sentence of imprisonment has caused to her and their children. She describes him as a loving father, with a special relationship with their 21 month old daughter.

The next matter Mr Juran refers to is the appellant's attending, and his almost successful completion of, a Maori carving course as part of an Access scheme. The victim has provided copies of the report on his participation in the scheme, which are indeed complimentary. She says that he has now been offered employment helping to train other students. The pre-sentence report makes a similar reference. Mr Juran has advised that such an employment offer has been received on the basis that the appellant would be ready to commence in early February next year. Finally, Mr Juran reports of the appellant's willingness to undertake the courses to which I have referred, and generally the favourable report from the probation officer.

These matters were considered, if not quite in the detail to which I have referred, by the judge when passing sentence. However, I have formed the view that a sentence of 12 months was excessive. The maximum sentence for this offence is two years imprisonment. The court is required by s 7(2) of the Act, where it considers a sentence of imprisonment should be imposed, to make the term as short as is in the opinion of the court consonant with promoting the safety of the community. I am satisfied on the information now available to me that there is really very little likelihood of the appellant ill-treating his wife again. There are no other aspects relating to the safety of the community that need to be taken into account. The events that occurred, including the sentence that has been imposed, has brought home to the appellant the seriousness of his conduct and the need for him to take steps to ensure that it does not recur.

When all of the factors to which I have referred are taken into account, I am satisfied that a term of imprisonment of six months would be sufficient to demonstrate society's rejection of domestic violence of this kind and bring home to this appellant in no uncertain fashion that this conduct will not be tolerated and that he will have to accept the assistance available to ensure that will not. I am influenced in that conclusion by the plea made on his behalf by the victim. Assuming the usual early release, such a sentence should enable him to accept the employment that has been offered to him.

The appeal is allowed. The sentence of 12 months imprisonment is quashed and in its place the appellant is sentenced to a term of imprisonment of six months. The sentence of supervision and the conditions imposed in the District Court remain.



Solicitors for the respondent:

Meredith Connell & Co (Auckland)

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