N2LR

NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

28/10

TGA AP 28/94

1650

BETWEEN TONY ROBERT GEORGE ECCLES

Appellant

A N D POLICE

Respondent

Hearing: 17 October 1994

Counsel: J. Bergseng for Appellant
D.J. McDonald for Respondent

Judgment: 17 October 1994

ORAL JUDGMENT OF ANDERSON J

Solicitors for Appellant: Trotter Bergseng & Co., Rotorua

Solicitors for Respondent: Davys Barnett, Rotorua

This is an appeal against a sentence of 12 months imprisonment imposed in the District Court at Waihi on 7 July 1994. The appellant pleaded guilty to a charge of assault laid pursuant to s 196(1) of the Crimes Act 1961. The facts were that in the course of an interview at the Income Support Office in Paeroa the appellant became agitated and struck the interviewing officer with a closed fist on the jaw and side of the face. The interviewing officer was knocked to the ground and he required treatment from a doctor for the effect of the assault. He suffered a lacerated chin, bruise to the right side of the face, and in falling seems also to have bruised his ribs.

The appellant is a person who suffers from schizophrenia and is usually on medication although, as happens so commonly in the Court's experience, the medication may not have been fully maintained at the time of the offending.

The appellant pleaded guilty at the earliest reasonable opportunity, notwithstanding which he was sentenced to the maximum term that could have been imposed by the Court. He has a previous conviction for assault on a female and some five years ago he assaulted a police officer.

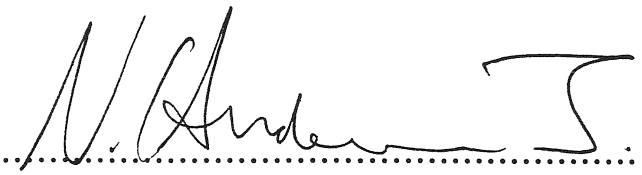
The learned District Court Judge thought that the case was within the scope of the amendments to s 5 of the Criminal Justice Act but since the particular offence carried a maximum of less than two years imprisonment it is not a qualifying offence for the purposes of that statutory presumption of imprisonment. Nor was any credit given for the early plea of guilty, nor an allowance made for the medical condition of the appellant.

The learned District Court Judge was entitled in the circumstances to impose a term of imprisonment for an attack on a person simply attempting to

do a difficult job. However in all the circumstances the sentence was manifestly excessive and the starting point involved two errors of law. The first error was in considering that the relevant offence was a qualifying offence for the purposes of the amendments to s 5 of the Criminal Justice Act. The second error of law is that no allowance was made for the early plea of guilty.

The appellant has been in custody now for 3 months and 10 days. In all the circumstances of the case a sentence of 3½ months imprisonment would be a firm sentence appropriately punitive and deterrent.

The appeal is allowed. In lieu of the sentence of 12 months imprisonment a sentence of 3½ months imprisonment is imposed.



N.C. Anderson, J.