

* ROYAL COURT

16th August, 1990 117A.

Before: The Deputy Bailiff, and
Jurats Bonn and Le Ruez

Police Court Appeal: DC

Appeal against term of imprisonment of
six months imposed following the appellant's
conviction on a charge of assault.

Advocate S.C. Nicolle for the Crown.
Advocate M. St. J. O'Connell for the appellant.

JUDGMENT

DEPUTY BAILIFF: Mr. O'Connell has said everything that could possibly have been said on the appellant's behalf and we have given very careful consideration to all that he did say which is why we have been some time.

The first thing to be said here is that this was a serious offence. This Court has said before, as we were properly reminded by the Crown Advocate, that street violence will not be tolerated.

This was a case of a group of young men and boys attacking in broad daylight a gentleman who was going about his business lawfully

and who did nothing to provoke them. Sadly the attack had racist undertones.

We accept the appellant's statement that he is not a racist and as coloured friends, but the fact remains that on this occasion he formed part of a group, members of which issued racist taunts and insults and that of the group he was the most culpable so far as the physical attack was concerned.

This is quite different from run of the mill breaches of the peace. We have no hesitation in saying that the Magistrate was not wrong in principle in imposing a custodial sentence. On the contrary we believe that he would have been wrong had he done otherwise.

The cases relating to intermediate recidivists carry no weight in circumstances such as these.

The only remaining question therefore is whether the sentence imposed was manifestly excessive.

Although the injuries were not severe we do not agree that a sentence of six months should be reserved for grave and criminal assaults. It is all a question of degree. Here the appellant aimed two kicks at the victim, the second of which probably connected. He then followed these up with a hard punch to the back of the head. Where somebody in no state to defend himself is struck from behind, that in itself is a cowardly form of assault. An assault of that kind could have had serious consequences. We have no doubt that the victim suffered very considerable fear and distress.

We commend Mr. Crockhart for his public spiritedness and concern. He acted as the Good Samaritan on this occasion. If he had not, it might well be that the victim would have suffered further assault.

We have considered the disparity argument and have rejected it as having no application at all in the present case. [H] was very much younger and played a much smaller part. A youth of sixteen should not be sentenced to imprisonment except as a last resort. It is true

because we have made enquiries that in the case of Hall the last resort has since occurred because on the 27th June, six days after he was sentenced for this offence, he was before the juvenile court again for obstructing the police when he was again placed on one year's probation order with 20 hours of community service.

On the 4th July he appeared yet again before the Juvenile Court for illegal entry with intent to commit a crime and on that occasion he was fined £50 and there was an order that the community service order should continue.

On the 25th July he again came before the Juvenile Court on a representation of the probation department relating to his breaches of probation. On that occasion the probation and the community service orders were discharged and Hall was sentenced to two and a half months' imprisonment.

However, it should be noted that imprisonment was imposed only because the Young Offenders' Centre is totally out of commission whilst alterations, repairs and refurbishment are in progress at the prison. Therefore it was an exceptional circumstance requiring an exceptional remedy. But in June at the time of sentencing the Magistrate was right to treat Hall differently from the appellant who was an adult with a deplorable record and who had a much greater degree of culpability. It is not true to say, as was suggested to us, that in a group situation all members are equally responsible. That question goes to guilt not sentence.

The sentencing court has a duty to apportion culpability and sentence accordingly. A slap on the side of the face with an open hand accompanied by taunts cannot be compared with the aiming of two kicks and the delivery of a hard blow to the back of the head.

The Court is unanimous in its view that the sentence imposed by the Assistant Magistrate was not a day too long and that he was right to use his maximum sentencing powers.

Therefore the appeal against sentence is dismissed and Mr. O'Connell shall have his legal aid costs.

Authorities

- D.A. Thomas (2nd Ed'n) p.20 re. "The intermediate recidivist" and pp.64-66 inclusive re. "Disparity of Sentence".
- A.G. -v- AL , AS and GC (9th July, 1990) Jersey Unreported.
- McGurk -v- A.G. (1987-88) JLR (Part 3) N.4 C of A.
- A.G. -v- Rowe (6th May, 1986) Jersey Unreported:
- Bing's Criminal Procedure and Sentencing in the Magistrates Court (1990 Ed'n) pp.166-168 inclusive.
- A.G. -v- McGettigan (25th March, 1988) Jersey Unreported.
- A.G. -v- Ryan and Mesney (20th April, 1990) Jersey Unreported.
- A.G. -v- Wakeling and O'Driscoll (23rd April, 1990) Jersey Unreported.

