

COURT OF APPEAL

de JERSEY CJ
WILLIAMS JA
MACKENZIE J

CA No 264 of 2005

THE QUEEN

v.

STEVEN JOHN FRIDAY

Applicant

BRISBANE

..DATE 30/11/2005

JUDGMENT

MR A W MOYNIHAN (instructed by Legal Aid Queensland) for the applicant

MR M J COPLEY (instructed by the Director of Public Prosecutions (Queensland)) for the respondent

MACKENZIE J: The applicant was sentenced to three years imprisonment with no suspension or recommendation for post prison community based release for an offence of wounding. At the time of sentence the applicant was serving a period of six months imprisonment for breach of an intensive correction order imposed for two offences of driving whilst disqualified and one for driving under the influence of alcohol and for breaches of domestic violence orders.

The sentence of imprisonment for three years was made cumulative on the six months that he was currently serving. At the time of sentence the six month period in custody had five months to run. The appeal is against the sentence for unlawful wounding on the ground that it is manifestly excessive.

The applicant and the complainant who were in a de facto relationship were on a bed in a room at a house on Palm Island in the early hours of the morning. They commencing arguing following an allegation by the applicant that she was seeing other men. The applicant got off the bed, moved around the room and returned to the complainant who immediately felt a

sharp pain through her left upper arm and chest. The applicant had stabbed her with a knife with the one blow penetrating and exiting the flesh of the upper arm and then lacerating the side of her chest.

The wound, which did not cause any damage to internal organs, required both deep and superficial sutures, as did the lacerations to the arm. The accused gave an explanation that the argument arose from jealousy and that he was drunk at the time.

His criminal history prior to the commission of the present offence consisted of behaving in a violent manner and obstructing a police officer on one occasion and, on a second occasion, of committing those offences and using insulting words as well. He also had one offence of breaking and entering premises and committing an indictable offence for which he was placed on probation.

The breach of the intensive correction order and breaches of domestic violence orders for which he was sentenced contemporaneously occurred after the present offence but before sentence. The appeal record shows that the relationship subsists since the complainant has been visiting the applicant in prison.

In his brief sentencing remarks the learned sentencing Judge said that the offence was an extremely serious one. He said that he took into account the applicant's plea of guilty, his age and the apology he had made to the complainant. He said that the fact that he was drunk at the time may explain what he did but could not excuse it.

He referred to the need to deter others from obtaining a knife and stabbing someone just because they got into an argument. He said that the offence was very prevalent on Palm Island. The applicant's counsel concedes that a head sentence of three years imprisonment is within the permissible range but submits that it was at the top of the permissible range. There is some support for that in the judgment of this Court in *R v Shillingsworth* [2002] 1 Qd R 527.

It is submitted that if the learned sentencing Judge had moderated the sentence for the matters of mitigation the notional starting point must have been of the order of four years imprisonment which was beyond the permissible range for an offence of the particular kind demonstrated by the facts. It is submitted that there should have been a partial suspension or a recommendation for consideration for post prison community based release after nine to 12 months.

In my view the sentence imposed, which requires the applicant to serve at least 18 months imprisonment after he completes the suspended sentence is manifestly excessive in the circumstances of the case. I would grant the application for leave to appeal and allow the appeal by ordering that the sentence of three years imprisonment imposed in the District Court Townsville on 14 September 2005 be suspended after nine months of that three year term with an operational period of three years. In other respects the sentence stands as pronounced.

THE CHIEF JUSTICE: I agree.

WILLIAMS JA: I agree.

THE CHIEF JUSTICE: The orders are as indicated by Justice Mackenzie.
