

COURT OF APPEAL

[1992] QCA 077

MACROSSAN CJ
McPHERSON JA
WILLIAMS J

CA No 310 of 1991

ATTORNEY-GENERAL OF QUEENSLAND

Appellant

v.

PAUL JASON LOGAN

Respondent

BRISBANE

... DATE 2/4/92

JUDGMENT

JUDGMENT

THE CHIEF JUSTICE: This is an appeal by The Honourable the Attorney-General against sentence. The respondent was a young man of 19 years when sentence was passed.

There were two offences which took place on 14 May 1991. The first was the serious matter. It was of unlawfully doing grievous bodily harm to the male complainant identified in the proceedings. On that count, the learned sentencing Judge imposed a six month custodial term and ordered that the respondent be subject to probation for three years.

The second matter was something which arose on the same occasion. The respondent assaulted the female complainant involved in the first charge. On that matter, the respondent was sentenced to a custodial term of one month, to be served concurrently.

The events happened outside a nightclub in the early hours of the morning. A fight commenced - it seems reasonable to call it a fight as a description as useful as any - it commenced because the respondent approached the female complainant and the male complainant then returned, or intervened, and there followed an exchange of something which could have been regarded as provocation, not in the legal sense, but sufficient to cause the fight to begin. That, in itself,

might not have been as serious as what followed.

The respondent quickly got the better of the male complainant and knocked him to the ground. The really serious aspect occurs because, at that point, the respondent did not desist in continuing vicious assaults upon the male complainant. He kicked him while he was on the ground and caused very severe injuries and the record discloses their nature.

He caused the complainant to suffer a fractured skull in the region of the occipital bone at the back of the head. The medical description then is a right haemotempinum, a rupture of the right ear canal. There was laceration and depression of the left temporo parietal area, laceration to the left supraorbital ridge, multiple contusions on his face and a possible fracture of the nose. There was permanent effect flowing from the injuries. The complainant suffers from deafness in his right ear. It may be only partial deafness, it is not clear, but deafness it is.

The female complainant suffered some relatively minor injury and nothing more than a bruise I believe when she attempted to intervene to protect the male complainant after he had been sent to the ground and the assault, which I described as vicious, continued.

The Judge took what might be thought a lenient view. He

appears, looking at his reasons, to have been particularly impressed by the youth of the respondent and by the fact that he had not previously been offered probation or any community based program even though he had been convicted of assault previously in circumstances which must be regarded as relevant. I shall mention that in a moment.

The Judge proceeded to offer what he described as a chance to the respondent. The question for us is whether that chance was justified. On 21 June 1989, the respondent was convicted amongst other charges of assault occasioning bodily harm. This assault was one on a female and as we interpret the criminal history sheet with the assistance of counsel he was sentenced to a term of one month's imprisonment in respect of it. It is a serious feature of the case that not long after having been convicted on this first assault to which I have just referred, he should have been involved in a further extremely serious episode, that is the matter involved in the present case.

This is so, although at the time of the second offence with which we are concerned, he was still only 19 years of age. The learned sentencing Judge, it seems to me, appears to have over emphasised factors pointing, as he appears to have thought, to amelioration. He failed, it appears to me with respect, to take sufficiently into account the features of

seriousness which the case exhibits. We have had the benefit of looking at photographs, exhibits in the case, taken of the male complainant after the assault and showing the condition to which he had been reduced.

A case relied on considerably below, it appears, was R v. Davis CA 336 of 1990. The Crown referred to that case, which when examined was one where the Appeal Court interfered to order a term of imprisonment of two and a half years with a recommendation for consideration for parole after serving nine months of the term in question. The reliance on that authority calls for some limitation on the freedom which this Court might otherwise have felt was appropriate in the matter, if it were approaching it afresh, uninhibited by the sentence actually imposed by the Judge in this case and that authority very much relied upon by the Crown below.

In any event, I think that the sentence imposed was unduly light considering the circumstances of the case and that we are justified in interfering and should in fact interfere. I would allow the appeal, set aside the sentences imposed below and order that the respondent be sentenced to a term of imprisonment of two and a half years, adding a recommendation that he be considered for parole after he has served one year of that term; the term of imprisonment and the recommendation both to date from the original conviction.

McPHERSON JA: Yes I agree with what the Chief Justice has said and the order he proposes.

WILLIAMS J: I agree.

THE CHIEF JUSTICE: That will then be the order of the Court and we will order that a warrant be issued accordingly for the apprehension of the respondent, who we are told, is presently at large.
