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## SUPREME COURT OF QUEENSLAND — COURT OF CRIMINAL APPEAL

**GABRIEL v CAMPBELL****Shepherdson, Williams and Ambrose JJ****30 August 1990**

**CRIMINAL LAW – SENTENCING – ASSAULT BY SPITTING – OFFENCE COMMITTED A SHORT TIME AFTER BEING SENTENCED FOR OTHER OFFENCES – WITHIN PRECINCTS OF COURT – WHETHER CUSTODIAL SENTENCE APPROPRIATE – WHETHER SUCH SENTENCE SHOULD BE ORDERED TO BE SERVED CUMULATIVELY.**

C., having been sentenced to terms of imprisonment and whilst being escorted to the police watchhouse, spat in the face of a police officer G., who had been involved in C.'s arrest. C. was charged with assault and sentenced to 3 months' imprisonment to be served cumulatively upon the sentences earlier imposed. Upon application for leave to appeal—

**HELD: Application refused.**

**The act of spitting in the police officer's face was a particularly degrading form of assault and was a serious offence compounded by the fact that it was committed in the precincts of the court.**

**SHEPHERDSON J:** [1] On 26 April 1990 the applicant was arrested and charged on three offences of supplying a dangerous drug to another, and one charge of possessing a dangerous drug. All these charges were laid under the provisions of the *Drugs Misuse Act*.

The prosecution elected to proceed summarily, and on the morning of that day the applicant appeared before the Magistrates' Court at Gladstone and pleaded guilty to those four charges. He was not represented. The Magistrate convicted him, and on each of the supply charges sentenced him to three months' imprisonment, and one month's imprisonment for the possession charge. All sentences were concurrent.

On leaving the court the applicant was being escorted to the watchhouse. It appears that this was in a building separate from the building in which the court was. Stairs led from the court building to the level of the watchhouse. As the applicant was walking down the stairs he approached a detective who had been involved in the drug arrests. That detective was named Gabriel. The applicant spat in the complainant's face. He was restrained and taken to the watchhouse where he was later charged.

He was taken back into court and the proceedings show that the Magistrate asked the applicant whether he wanted an adjournment to seek legal advice. On being told, "No." the Magistrate asked the applicant to enter a plea to this charge. The applicant pleaded guilty and was asked whether or not the plea was voluntary or induced, to which the applicant replied that he pleaded guilty of his own free will.

The facts of the matter were then placed before the Magistrate. Amongst the facts were his antecedents, namely, that he was a single man, 24 years of age, residing in a de facto relationship in Gladstone and that there were three children living with him and his de facto wife. The Magistrate was told the applicant was then unemployed and had certain prior convictions. A copy of the applicant's criminal history is before this court. It was before the Magistrate. It shows that between 1 February 1985 and 3 January 1989 he had been regularly before the Magistrates' Courts [2] in Gladstone and Caboolture, principally in the Gladstone Court. The charges ranged from receiving stolen property on 1 February 1985 through to the last recorded convictions, namely, behaving in a disorderly manner, resisting and assaulting police, these latter convictions having occurred on 3 January 1989. The Magistrate was asked by the prosecutor for what he called a moiety or some form of compensation for the complainant due to the degrading nature of the assault and the ever present threat of contracting hepatitis B. The Magistrate asked the applicant the reasons

for his actions, to which the applicant replied that he had become upset on seeing the person who was causing him to be sentenced to a term of imprisonment. The Magistrate then sentenced the applicant to a further three months' imprisonment to be served cumulatively with the sentence imposed earlier that day. He made no order in relation to compensation.

The applicant has appealed against the sentence imposed on the assault conviction. The Court has before it an affidavit from the applicant in which he has added further material, including the claim that in a moment of frustration he spat at the complainant who he said was grinning at him. The matter of the complainant grinning was not apparently mentioned to the Magistrate. Further in his affidavit the applicant, while saying that he could recall the police prosecutor reading out the police version of the facts could not recall exactly what he said in reply when asked by the Magistrate.

Mr Alcorn for the applicant conceded in effect that the applicant must have received some sort of penalty from the Magistrate. He, in effect, conceded that if imprisonment were the option chosen then any term had to be cumulative upon the sentences imposed earlier that day. It seems to me that concession is correctly made. However, Mr Alcorn has urged upon this Court that the sentence of three months cumulative should be set aside as manifestly excessive for the following reasons:

- (1) The applicant had pleaded guilty to the assault charge;
- (2) That the sentence was ordered to be served cumulative with the earlier sentences;
- (3) That the offence was not premeditated but was instantaneous in its nature and based on anger and frustration;
- (4) That the applicant had appeared unrepresented at both appearances.

For myself I do not see that the features outlined in No. 2 and No. 4 have any bearing on what this Court should do. It is not suggested that the Magistrate in any way mistook the facts or acted in such a way that this Court is entitled to interfere with the sentence imposed. What Mr Alcorn had to do was satisfy the Court the sentence on its face is manifestly excessive such that we should interfere. Now, spitting in a person's face, indeed spitting at a person is, if I may say so, an un-Australian habit. It is conduct which if a man in the street were subjected to it it could reasonably be expected that the victim would respond and probably execute some form of self-help. That is beside the point but it indicates the view which I take of the seriousness of this offence. The matter is compounded by the fact that the offence was committed within the precincts of the Court. The term of imprisonment in my respectful view is one which has not been shown to be manifestly excessive. The prosecutor, as I have mentioned, drew to the Magistrate's attention the degrading nature of the [3] assault and the ever present threat of contracting hepatitis. In my opinion, the application should be refused.

**WILLIAMS J:** In my view spitting in the face is a particularly degrading form of assault. It was clearly done in this case with the intent to constitute as great an affront to the police officer concerned as is possible. Such an assault is calculated to cause concern about hepatitis B and similar diseases. It is a circumstance of aggravation that this offence occurred in the precincts of the court. The applicant has shown no remorse and that is confirmed by the breach of bail and his absence from court today. Given the applicant's previous criminal history, the three months imposed with respect to the drug offences is on the lenient side, and in light of that a cumulative sentence is called for with respect to the assault. I agree that the application for leave to appeal against sentence should be refused. I would order that a warrant issue for the apprehension of Steven Wade Campbell.

**AMBROSE J:** I agree and I have nothing useful to add.

**SHEPHERDSON J:** I had in mind the matter of the issue of a warrant. The order of the Court then is that the application for leave to appeal against sentence is refused. The Court orders that a warrant issue for the arrest of Steven Wade Campbell.

*[Judgment supplied courtesy of the Chief Stipendiary Magistrate, Queensland.]*