

27/89

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v SCOPILLITI

O'Bryan, Gray and Vincent JJ

9 May 1989

CRIMINAL LAW – SENTENCING – ASSAULT POLICE IN EXECUTION OF DUTY – INJURY CAUSED – LACERATIONS TO FOREHEAD AND EAR – WHETHER GENERAL DETERRENCE AN IMPORTANT FACTOR – WHETHER UNSUSPENDED CUSTODIAL SENTENCE APPROPRIATE.

On New Year's Eve, during an incident in which Police Officers were involved, S. struck a police officer on the head with his hand in which he held a beer can. The officer was rendered unconscious and required treatment for lacerations to his forehead and ear. S. was later charged with assaulting the officer in the execution of his duty and intentionally causing injury. On the plea, it was said that S. was aged 24 years, had numerous priors for traffic offences, had been affected by his consumption of alcohol at the time of the offences, and had struck the blow to assist his mate who was in police custody. On count one, S. was sentenced to 12 months' imprisonment, count two, 15 months' imprisonment (effective sentence 15 months' imprisonment) and to serve a minimum of 6 months before eligible for parole. Upon appeal—

HELD: Appeal dismissed.

Given the prevalence of this type of offence, it was appropriate for the sentencing judge to stress the importance of general deterrence as a sentencing factor.

O'BRYAN J: [1] This is an application by Vincenzo Scopilliti for leave to appeal against sentence. The applicant was presented in the County Court in March this year on two counts: one, that on 31st December, 1986, at Portsea he assaulted a member of the Police Force in the execution of his duty; two, that on the same date he without lawful excuse intentionally or recklessly caused injury to the said member.

The applicant pleaded guilty and was sentenced on count 1 to twelve months' imprisonment and on count 2 to fifteen months' imprisonment. The total effective sentence was fifteen months' imprisonment and a minimum term of six months was fixed before the applicant will become eligible for parole. The applicant admitted numerous prior convictions for what may be described as traffic offences. He is now 24 years of age.

The circumstances may be briefly described. On New Year's Eve 1986 the applicant and about a dozen male friends travelled to Portsea in a bus. They were drinking alcohol. They arrived in Portsea at about 9.30 pm. Some of them became involved in an incident near the female toilets and police became involved in the incident. When one of the applicant's friends was arrested by a police officer, one of the police concerned lost his hat. As he bent down to retrieve it, the applicant ran in from approximately 5 metres away and with a round arm action struck the police officer on the right side of his head with his right hand in which was clutched a beer can. The blow was described as a "king hit". The police officer fell to the ground unconscious. Fortunately, the [2] police officer recovered, although he required treatment for lacerations to the forehead and ear. The applicant ran away and was not immediately arrested. When he was arrested, he gave as his reason that he was not going to stand back and let his mate be taken by the police, and that is why he struck the blow.

In sentencing the applicant the learned Judge stressed the importance of general deterrence as a factor in sentencing, and in his reasons stated that he took into account the plea of guilty and had considered sentencing options other than a custodial sentence which were available to the Court.

Mr Flatman, who appeared for the applicant, accepted that the offences may be characterised as cowardly and most unacceptable conduct. Mr Flatman also accepted that in the circumstances of these offences general deterrence is an important consideration. He stressed, however, that

there were personal circumstances which are mitigatory and relied on the immaturity and youth of the applicant. He also relied upon the circumstance that the applicant was probably affected by alcohol and, indeed, evidence that the applicant had consumed a quantity of alcohol on the night in question was available. Mr Flatman also relied upon the circumstance that the applicant was acting in a peer group situation and that his behaviour was impulsive and did not involve premeditation.

The circumstances of these offences were regarded by the Court below as appropriate for a sentence which would deter others, particularly others in the applicant's peer group. It is a notorious fact that [3] persons affected by alcohol on New Year's Eve often act mindlessly at bayside resorts and disrupt the enjoyment of decent citizens and make life both dangerous and intolerable for law officers. These were circumstances which were clearly taken into account by the learned Judge and in my opinion the reasons offered by the learned Judge for imposing a term of imprisonment were cogent and correct. I can detect no error in the sentencing process. In my opinion the application for leave to appeal the sentence should be dismissed.

GRAY J: I agree.

VINCENT J: I agree.

APPEARANCES: For the Crown: Mr D Just, counsel. JM Buckley, Solicitor for the DPP. For the applicant Scopilliti: Mr G Flatman, counsel. Legal Aid Commission Victoria.
