57/90

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v DAILAKIS

Kaye, O'Bryan and Vincent JJ

7 August 1990

CRIMINAL LAW – SENTENCING – CAUSING SERIOUS INJURY – COMMITTED BY BOUNCER ON NIGHTCLUB PATRON – PREVIOUS COURT APPEARANCES INVOLVING ASSAULT – RELEVANCE OF GENERAL/PERSONAL DETERRENCE – WHETHER CUSTODIAL SENTENCE APPROPRIATE.

D., a nightclub bouncer, dragged an intoxicated patron down the stairs by his hair then kicked him about the head 2 or 3 times thereby leaving a shoe imprint on the victim's face. On the plea for a charge of intentionally causing injury, D. admitted previous court appearances involving unlawful assault and assault in company, and was sentenced to 18 months' imprisonment with a minimum of 12 months before eligible for release on parole. Upon application for leave to appeal against sentence—

HELD: Application dismissed.
In fixing sentence, it was:
(i) appropriate to attach weight to the question of personal deterrence, having regard to the offender's recent court appearance involving assault; and

(ii) necessary to warn bouncers and those exercising similar powers that their use of unlawful violence is committed at the risk of attracting a custodial sentence.

KAYE J: **[1]** Evangelis Dailakis makes application for leave to appeal against sentence. The applicant was convicted in the County Court at Melbourne on one count of intentionally causing injury. His Honour Judge Lazarus sentenced the applicant to a term of eighteen months' imprisonment and fixed twelve months as the minimum period before he would be eligible for parole. He seeks leave to appeal on the ground that the sentence was manifestly excessive in all the circumstances of his case. The legislature has fixed, as the maximum penalty for an offence of intentionally causing injury, seven years' imprisonment.

The applicant was born on 10th September, 1962, and is now almost 28 years of age. At the time of the offence he was 26 years of age. The offence occurred during the early hours of 6th April, 1989. Then the applicant was one of two bouncers employed at the Hippodrome Nightclub in King Street, Melbourne. One McConnell, who had been drinking and was doubtless drunk, was asleep at a table in the main bar and disco on the upper floor of the nightclub. The applicant failed to arouse McConnell; he and another bouncer then attempted to lift McConnell, who proved to be too heavy. The applicant dragged McConnell to the head of the stairs. From there he dragged him by the hair down the stairs, bumping his head as he did so. At the foot of the stairs, or just outside the front door, the applicant kicked McConnell in the head two or three times. To **[2]** bystanders, McConnell appeared to be unconscious. Outside the nightclub it was raining. The applicant dragged McConnell to the doorway of the adjoining nightclub, where he left him. McConnell suffered the loss of part of a front tooth and a large bump and bruise below and behind his left ear. His face bore a mark consistent with a shoe heel imprint.

The relevant circumstances are these, in my opinion. The victim, being for practical purposes in an unconscious state, was harmless and helpless. In that condition, the applicant dragged him by the hair down the stairs. There he kicked him about the head two or three times, leaving a shoe imprint on his face. It was a proper characterisation of the applicant's conduct that it was brutal and sadistic and an attack upon a defenceless man. There were no extenuating circumstances. On 4th December, 1988, the applicant was convicted of unlawful assault and the charge was adjourned for twelve months, it would seem on a bond. He was also convicted of assault in company and fined $250. His previous convictions included, apart from those, acts of dishonesty and damage to property. The learned trial Judge, however, confined his attention to the two convictions in December 1988.

Thus it was less than four months after suffering convictions for assault and violence that he committed this unprovoked attack upon a defenceless man. This circumstance leads to the inevitable conclusion that the **[3]** punishment for his early acts of criminal violence was less than required to deter him from further acts of assault. Consequently the sentence which the learned trial Judge was called upon to impose upon the applicant was one which included a substantial element by way of personal deterrence. In addition, there was need for His Honour, by the form of the sentence, to warn bouncers and those exercising similar powers, as well as others who might be tempted to use unlawful violence against other citizens, that they do so at risk of suffering a custodial sentence.

Mr Danos, who appeared for the applicant before this Court, has drawn attention to the statistics for sentences in the higher Courts of this State during the years 1988 and 1989. He points out that the statistics for intentionally causing injury for the year 1988 show that the medium term for the offence was nine months' imprisonment, and for 1989 the medium was one year. He has also drawn our attention to various other aspects of those statistics However, I do not find statistics of that type very helpful. It has often been pointed out in this Court and in other Courts that statistics have very limited use, for the reason that they do not indicate what were the circumstances surrounding the commission of the crime nor matters personal to the offender.

Mr Danos has pointed to various matters appearing in the discussion between counsel and the learned trial Judge. **[4]** In my view, His Honour kept clearly in mind that he was not sentencing the applicant for intentionally causing serious injury. What His Honour was making clear was that he was sentencing the applicant for intending to cause injury, but that the injuries suffered by the victim were serious. In my view, the injuries were of a serious nature. Clearly the sentence of eighteen months' imprisonment and twelve months' minimum term reflected the important elements of personal and general deterrence which were necessary for punishment in the circumstances of this offence. In my opinion it has not been demonstrated that the sentence was manifestly excessive. I would therefore dismiss the application.

O'BRYAN J: I agree.

VINCENT J: I agree.

KAYE J: The application is dismissed.

APPEARANCES: For the Crown: Ms C Douglas, counsel. JM Buckley, Solicitor for the DPP. For the applicant Dailakis: Mr T Danos, counsel. Coadys Solicitors.
