

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 27/88

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS.

ANTHONY LLOYD

Leon Green for the Appellant

Y. Sibble for the Crown

April 18, 1988

ROWE P.:

The appellant on his plea of guilty, was convicted before a very experienced Resident Magistrate for the parish of Kingston for assault occasioning actual bodily harm committed on the person of Maizie Callum on the 26th of January, 1988, and was ordered to serve a sentence of nine months imprisonment at hard labour.

The allegation on behalf of the Crown, which was tacitly accepted by the appellant, was that on the 26th of January, 1988, on Conrad Lane in the parish of Kingston, the accused and the complainant had an argument, the accused boxed her a number of times, punched her on her left breast, kicked her to the ground, kicked her all over and

under her 'belly bottom.' She suffered bruises and swellings. She had pains; she received treatment at the Kingston Public Hospital which included a prescription for tablets.

The appellant having pleaded guilty was given an opportunity to give an explanation as to his conduct and he told the learned Resident Magistrate that the whole incident came from extreme provocation over a period of time. He said that she kept making mischievous complaints. Because she and his baby mother live on the same road, she told the baby mother that the appellant had another girlfriend in the area. He had warned her on more than one occasion to leave his business alone. On the day in question, he said, he confronted her about the same thing. She admitted to the fact that she was interfering and when he started to talk to her she started to get abusive, so unfortunately, he lost his temper, like any other human being.

He admitted to the Resident Magistrate that he did in fact have two girlfriends, so the complainant would not have been telling a lie, if she did make a report to his baby mother.

In passing sentence the learned Resident Magistrate said:

"There has been a flood of these cases of beating women recently. Men must respect women. In Jamaica to kick someone is to treat him or her worse than a dog. A humiliating experience, unnecessary violence"

and he noted carefully the area where the complainant received the kicks and he said in his opinion a deterrent sentence was necessary.

Mr. Green in advancing the cause of the appellant before us in relation to sentence has submitted that the learned Resident Magistrate ought in a case such as this, where he contemplated passing a sentence of imprisonment on the appellant, who had no previous conviction and so had never been sent to prison before, who had pleaded guilty and who was unrepresented, should first have enquired into the antecedents of the appellant, as to his character and employment prospects and to ascertain

for himself whether there was any other appropriate sentence to be passed upon the appellant.

He submitted further that where the defendant had raised provocation, as in the instant case, the Resident Magistrate in passing sentence ought to have indicated whether or not he had considered provocation as a mitigating factor. He said too, that in the instant case, in the absence of a medical report, the Resident Magistrate ought to have made a deeper enquiry into the nature and the severity of the injuries sustained by the complainant.

Mr. Green referred us to an affidavit filed by the appellant for the purposes of the appeal wherein the appellant said that the complaint made by the complainant was grossly exaggerated and that it had not been her intention originally to have reported the matter to the police, but rather, she had come along with a man to his work place and tried to attack him physically.

There were four separate affidavits as to character, including one from a well known and highly respected Anglican Priest, Rev. Calvin Golding. In this affidavit he told of the early upbringing of the appellant noting however, that the appellant was not regular in his attendance at Church and he said too that the appellant was acclaimed as one who is trustworthy and honest and especially one who had a deep sense of commitment to his mother.

An affidavit from a social worker said that she was with him in the days when he was a Sunday School Teacher, that he was a leader in his community and he had gained the respect of his peers and others and he had a reputation for good conduct.

We heard that the appellant had a good work ethic, a good work attitude and his place has not been filled with the Credit Union with which he worked and we were given something of his School record which shows that he has some academic achievement and could be employed as a Clerk.

We also have a letter from the Department of Corrections and this came from the Chaplain to the Prisons.

We have taken into consideration every point made by Mr. Green and the import of which is that this was a one-off situation, not likely to be repeated and therefore the learned Resident Magistrate had not applied his mind to the whole range of penalties appropriate and had come down, he said, wrongly on the deterrent sentence.

We take the view that this was a very serious attack. It was an impertinent kind of attack. It was an attack in the street. It was an attack in which the woman was humiliated. She was boxed; she was knocked to the ground; she was kicked all over; she was kicked without any contemplation of where the kicks would land. Although the appellant said in his affidavit that he had lost his temper in like manner as any other human being would lose his temper, it must be recalled that he had started the incident by confronting the lady. He was the only one who used violence on that occasion and he used violence as the learned Magistrate said, in an unnecessary and harsh manner.

We think that the learned Resident Magistrate properly considered that this appellant should serve a custodial sentence and we cannot say that nine months are inordinate in the circumstances. We are not prepared to interfere with the sentence as passed by the Resident Magistrate which we think was appropriate in the given circumstances.

His appeal is therefore dismissed, but we will order that the time spent in prison will count towards his sentence, which will therefore begin to run from the 29th of January, 1988.