

MONTserrat

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.3 OF 1992

BETWEEN:

RAYMOND BARZEY

Appellant

and

THE QUEEN

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. C.M. Dennis Byron - Justice of Appeal
The Honourable Dr. Nicholas J.O. Liverpool - Justice of Appeal

Appearances: Appellant in person
Mrs. Gretel Thom for the Respondent

1993: April 27.

JUDGMENT

BYRON J.A.

On 9 November, 1992 the appellant was sentenced to twenty five (25) years for rape and fifteen (15) years for robbery, the sentences to run concurrently. He has appealed, in person, against his sentence on the ground that it is excessive.

The record shows that after the appellant was convicted the trial Judge adjourned the case to another date to consider the question of sentence, at which time he heard evidence and an address from the counsel who appeared for the appellant at the trial. The trial Judge did not record his reasons for the sentences he imposed.

Counsel for the Crown urged that the sentences were justified because the nature of the offences required severe punishment, the appellant was schizophrenic, and had eight (8) previous convictions.

The Nature of the Offences

The evidence revealed that the appellant accosted the virtual complainant as she was entering her home, forced her into the house at knife point with threats to her life, then raped and robbed her.

The circumstances under which these offences were committed were aggravated and justify severity of punishment.

The Appellant's Mental Illness

At the hearing on the issue of his sentence the appellant called Dr. Paul Johnstone to testify as to his mental health. The evidence indicated that since 1982 he had been diagnosed as suffering from schizophrenia and had been admitted to hospital some eight (8) times between 1988 and June 1991; that his illness is exacerbated by alcohol and marijuana abuse; that he responds to treatment and has lucid periods. The doctor expressed the opinion that the offences were committed in such a lucid period. There was no evidence that there was any relationship between his illness and the commission of the crime, nor that his illness would cause him to commit grave offences in the future if left alone.

The sentencing principles on which the court acts when dealing with offenders who have problems of mental health is discussed in Archbold 43rd edition at paragraph 5-191 where it is stated: -

"The fact that an offender is in need of treatment for alcoholism, drug addiction or psychiatric problems does not justify the imposition of a sentence longer than is warranted by the facts of the offence he has committed (see Roote [1980] 2 Cr. App. R(S) 368....."

I adopt this as a correct statement of the law.

I cannot therefore accept the submission made by counsel for the Crown that the appellant's mental illness was a factor which should influence the court towards the imposition of a longer period of imprisonment.

The Appellant's Record

The appellant admitted to eight (8) previous convictions and this was urged as being a factor to justify the sentence imposed. Examination of his record revealed that the appellant is 32 years old. His first conviction was in 1991. The other offences seemed to have been committed on the same day and included four (4) offences committed against the same complainant.

When a person has been convicted for criminal misconduct on separate charges for each component of his actions, the multiple convictions that result therefrom could easily convey a false impression as to his character. Therefore, a court should be cautious about the interpretation it attaches to such compound

convictions. I am of the view that it was wrong in principle to treat the appellant in this case as a persistent offender. The numerical burden of his eight (8) convictions is lightened by the fact that he had a clean record until 1991 when he would have been about 30 years old, and the dates on which these offences occurred were within a very limited time of each other.

In the circumstances, the sentence of twenty five (25) years should be reduced to reflect the punishment for a rape committed under aggravating circumstances, without the added aggravation of bad character antecedents or persistent criminal conduct on the part of appellant. We would therefore reduce the sentence to fifteen (15) years to run concurrently with the fifteen (15) year sentence for robbery.



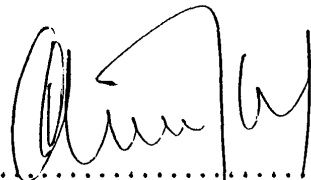
 C.M. DENNIS BYRON
 Justice of Appeal

I concur.



 SIR VINCENT FLOISSAC
 Chief Justice

I concur.



 NICHOLAS J.O. LIVERPOOL
 Justice of Appeal