

THE QUEEN

-v-

ANTHONY BENSON

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MacDERMOTT LJ (giving the judgment of the Court)

PRINGLE J

This is an application for leave to appeal against an effective sentence of 2½ years detention in the Young Offenders Centre. It was imposed on 14 March 1997 by His Honour Judge McKee QC at Belfast Crown Court. The applicant Anthony Benson had been found guilty by a jury on 2 counts:-

1. Attempted robbery of a leather coat from James Alan Boomer in Belfast on 27 November 1995
2. Assault on Boomer at the same time.

On the first count a sentence of 2½ years detention was imposed and on count 2 a concurrent sentence of 12 months.

THE BACKGROUND FACTS

On Monday 27 November 1995 Boomer a young man of 16 was outside a shop in Castle Lane. He was wearing a leather coat. 6 men approached him. He was grabbed, punched, kicked and knocked to the ground where he was further kicked. On admission to hospital he was found to have multiple contusions to face, chest and abdomen. The Judge described this as a thoroughly mean offence which it certainly was. It was also an example of the type of unprovoked and gratuitous violence of which there is currently far too much. People are entitled to walk the streets without being molested. If anyone sees fit to engage in this form of violence they must realise an immediate custodial sentence is virtually inevitable.

To return to the facts. Members of Boomer's family were in the vicinity and went to his aid. The applicant and his colleagues ran off down Castle Arcade where the applicant was stopped by Constable Glendinning. At this time the applicant was under surveillance by Constable Stanbridge and his colleagues who are members of the Area Crime Team. The applicant's record revealed why he was a subject of interest.

On 1 October 1995 the applicant committed theft and on the 18 October 1995 theft by shoplifting at Marks and Spencer. For the former offence he was at Belfast Juvenile Court on 22 November 1995 placed on probation for 12 months and on the latter required to attend an attendance centre for 24 hours.

Two comments can be made about those matters:-

- a. It would seem that the second offence occurred when the applicant was on, presumably, police bail for the first offence; and
- b. The court appearance occurred and the probation order was imposed just 5 days before the present offence.

That does not end the matter. On 2 November and 25 November there were further shoplifting and theft incidents and on 11 September 1995 the applicant had obstructed the police. These offences were dealt with on 14 February 1996 and their significance, as far as the present case is concerned, is that the applicant would have appeared to have been on bail in respect of them when he committed the present offences on 27 November 1995. This indicated two things:-

- a. A readiness to disregard his bail condition:
- b. His determination to continue offending despite being before the Courts and being on probation.

It now appears that on 21 November 1995 he had also been caught shoplifting in Lisburn and he appeared before Lisburn Juvenile Court on 28 October 1996.

For the applicant, Mr Campbell argued that the sentence was manifestly excessive, referring to the applicant's age the limited period of his offending (some 3 months) and to his mother's poor health.

The judge did have regard to the applicant's age; but age is unfortunately no badge of innocence and the applicant's offending at this period shows him to have been a law breaker -a persistent offender with no respect for the property of others. His mother's health is a matter which he the offender should have had regard to.

The main thrust of the argument is that the applicant has reformed and it is suggested has put this bad period behind him. Mr Campbell emphasized the age of the offender, the period of offending and the fact that the applicant has since this series of offences has come to light cooperated with his probation officer, got employment and apparently had a child by his girlfriend. An offender's recent behaviour is of course a factor to be considered by the sentencer. But good behaviour does not rule out a custodial sentence. We have to consider not only the

response of the offender and his rehabilitation but also the gravity of what was done and how the public would regard it. If people should get the idea that this form of violence can take place without any form of retribution then we would be liable to have a great deal more violence as people will think they can commit violence with impunity.

Mr Campbell laid much emphasis on the age of the applicant. As we have said age is always a factor to which a sentencer will have regard, but it must be viewed in context: not as a bare statistic. As the Judge rightly pointed out if he the applicant had been older he

would have dealt with him differently presumably by imposing a longer term of imprisonment.

No matter how well the applicant is now behaving the applicant requires to be punished for this unprovoked attack on Boomer, and as Mr Lynch for the Crown rightly pointed out the violence which was used was much in excess of what was required to obtain the coat off this young man's back. Such punishment should also seek to deter others from doing likewise. The Judge was concerned to know if the applicant had in fact "turned round". Having heard the evidence which, presumably, included that of the applicant he saw fit to say "the action on your part was that of a remorseless arrogant bully". Sitting in Belfast he, a very experienced Judge, is aware of the prevalence of this type of offence and when he imposes an immediate custodial sentence this Court should be slow to adopt any other course.

As we have already made clear "mugging" is not only an unpleasant offence and a serious offence it is also far too common. An observation of the Lord Chief Justice in the case of R v Williams [1982] 4 Cr.App.R(S) 156 at 157 bears repetition:-

"This was a mugging. It was a particularly unpleasant type of mugging and the fact that the mugger happens to be a female, and the fact that the mugger happens to be 21 years of age, does not detract from the fact that this was an attack on the highway on a perfectly inoffensive lady going about her own business, snatching her pendant and chain and her handbag and leaving her having been kicked and bitten. This sort of behaviour must be met by severe penalties and the sooner people realise this, and the sooner would be muggers realise that they will go to prison for a substantial length of time the better."

Mr Campbell realistically accepts that a custodial sentence is called for but he argued that 30 months' detention is excessive. We do not agree. This was a mean and vicious attack which is also an example of group violence at its worst and a longer period of detention would not have been inappropriate. The Judge chose to be merciful and we do not fault him for that. We would add that we have carefully read the moving letter written by the applicant's mother. We appreciate her misery and the suffering which her son has caused her and will continue to cause her as he

serves out his sentence. However, that misfortune which her son has brought upon her does not justify our interference with a sentence which is in no way excessive.

Accordingly the application for leave to appeal against sentence is dismissed.