

THE QUEEN

V

BRENDON FRANCIS GOODIN &  
DARIUS GEORGE DERICK CULPAN

**Coram:** Eichelbaum CJ  
Keith J  
Heron J

**Hearing:** 20 March 1997

**Counsel:** K B F Hastie for Crown  
A R Laurensen for Appellant Goodin  
J H Talbot for Appellant Culpan

**Judgment:** 24 March 1997

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**JUDGMENT OF THE COURT DELIVERED BY HERON J**

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This is an appeal against sentence of two and a half years imprisonment in respect of each appellant, for causing grievous bodily harm with intent to injure. The two appellants were found guilty by a New Plymouth jury on 22 November 1996.

On Saturday 7 October 1995 the complainant, Mr David Lean, left his restaurant business premises at approximately 12.30 am. He travelled down Devon Street in New Plymouth and then through a narrow alleyway to the back of the Top Town complex where his car was parked in a tenant's car park. Mr Lean, who was accompanied by his two daughters aged 15 and 13, heard voices from someone

following them through the alleyway. The alleyway was particularly narrow, not wide enough for two people to pass. On his version of events he emerged from the alleyway with his two daughters. He observed two men who then proceeded to attack him. One of them, Culpan, hit him with something held in his hand which he could not identify. The other man Goodin, launched himself at him. It was accepted by the two appellants that they were the two people who initially confronted Mr Lean, Goodin coming to Culpan's assistance when requested. Despite efforts to defend himself with a bag that he was carrying, Mr Lean was hit on the side of the head. His older daughter observed him attacked by several youths, of whom the appellants were two, and dragged to the ground and then kicked. As a result of her yelling at the men, they ran off. Her father was then unconscious on the ground and she rang an ambulance and he was taken to hospital. Mr Lean suffered a laceration to the top of his scalp and had blood coming from his left ear and a swollen left ear lobe which also had abrasions. He had abrasions, swelling and bruising over the back of the skull and mild concussion. He also had swelling, abrasions and bruising over his lumbar spine and coccyx. His permanent injuries arising from this attack were a partial loss of hearing for which hearing aids are required. He also suffered a loss of ability to taste food and has lost his sense of smell.

The grounds of appeal against sentence for both men are principally directed at the Judge's finding of relevant facts and the consequent role played by them in the events overall.

A dispute emerged as to where the major blow suffered by Mr Lean and described by him occurred. Mr Lean said it was after he had traversed the alleyway and was in a more open carpark area. His older daughter described Mr Lean as having traversed the alleyway but then returning there when a loud banging noise occurred. It was important at the trial because the first situation may have suggested little or no aggression or provocation from Mr Lean. The second situation raises a suggestion that he took the fight to the two appellants.

The Judge described the first injury inflicted by Culpan as occurring in the alleyway although the evidence from Mr Lean was that it was inflicted outside the

alleyway after they had emerged. It is submitted that the Judge relied on evidence from Mr Lean that the first assault was occasioned by Culpan even though in doing so the Judge had to rely on other evidence that this assault (perhaps with a weapon) occurred in the alleyway. The Judge said:

It appears that when the family left the alley you began to relieve yourself. On the evidence which was before the jury at trial it is at least possible that Mr Lean returned to the alley and confronted you. The degree of his confrontation is uncertain, but even if it were physical the response was completely excessive in all the circumstances. You (Culpan) called out and your friend Brendon Goodin came from the motor vehicle parked on the far side of Devon Street, down the alley, followed it appears quite closely by up to another five youths who had been in or around the vehicle parked in Devon Street. It appears that the first injury to Mr Lean was caused in the alley because he described the pain to his head. It is uncertain precisely what caused that injury, but from Mr Lean's evidence you Mr Culpan were the initiator of that first injury to the side of his head and you Mr Goodin were described by Mr Lean as launching yourself at him.

The Judge thought however that the gravity of the offence was not just confined to those two attacks and thought that a lesser charge might have been preferred but for the fact that the appellants were part of a group of persons who thereupon set upon Mr Lean and further attacked him.

Mrs Talbot submitted that the only safe inference to be made on the facts in light of the conflict of evidence was that Culpan and Goodin could be implicated only in the subsequent attack on Mr Lean whilst on the ground, and the jury's verdict of guilty explained in that way.

The Judge was entitled to reach her view as to the sequence of events even though the respective versions differed within the prosecution evidence. See *R v Accused* [1988] 1 NZLR 422, 426. Whether within the confines of the alleyway or beyond it, there was evidence from the complainant that Culpan caused the first injury, followed by Goodin who caused him to be disabled by launching at him, and then on the ground exposed him to kicking and the like from others.

For Culpan it is submitted that the verdict of the jury was more likely to relate to a finding that the appellant was a party to the kicking and punching rather than a finding that he was personally responsible for the blow to the head. We think the

Judge was entitled to select the evidence of Mr Lean's elder daughter to the effect that he may have returned to the alleyway, particularly because there were insulting and indecent remarks made to his daughters and there confronted Culpan. Whatever occurred between the two of them, the fact remains that Mr Lean described a blow by Culpan and pain in his head. Consistent with Culpan's cry for assistance, there was a further attack on Mr Lean by Goodin. Undoubtedly both Goodin and Culpan could be said to have had an intention to injure Mr Lean, and grievous bodily harm resulted. S.188(2) Crimes Act 1961.

As the sentencing Judge who presided at the trial observed, the Crown case was that the appellants were parties to the offence (S.66(1) Crimes Act 1961) which began in the alleyway and ended with Mr Lean dealt to on the ground in the car park. In light of that we do not have to consider whether the sentence would have been any different had the appellants role been limited to the events in the carpark.

It was submitted that the Judge's reliance on *R v Wikiriwhi* [1985] 2 NZLR 501 (four years imprisonment reduced to three) as a guide to sentencing was inappropriate because it was a much more serious case. That case reviewed a number of similar sentences for causing grievous bodily harm with intent to injure. We do not accept that the cases are not comparable. Here the long term injuries were more serious, even if the assault in *Wikiriwhi* was initially more violent. It also involved a complainant who set the scene by wanting to fight. A plea of guilty was available to the appellant in *Wikiriwhi*.

Goodin, aged 18 years, had been in trouble in 1994 and 1995, and since the offence, had appeared before the court on a number of minor charges including breaches of periodic detention. The Probation Officer described Goodin as having got his life together and that there was no requirement for a sentence of supervision. His mother indicated that at the time of the offence her son's behaviour was negative but that since that time, relationships had improved considerably. The Probation Officer further described Goodin as an intelligent and articulate youth who made no effort to colour his account to his own advantage. He also described him as having made important changes in his life.

Culpan is aged 20 years and at the date of sentence had one conviction for disorderly behaviour. Following his arrest on these offences and during 1996, he appears to have turned his life around and concentrated on getting qualifications in order to obtain employment. The day after the incident he spoke to his parents and surrendered himself to the police. Undoubtedly at this time, Culpan was unruly and having trouble coping with alcohol. The Probation Service suggested that a sentence of supervision was not indicated as he seemed to have put his life together.

Ms Talbot accepted the Judge's conclusion that the events overall constituted serious violence pursuant to S.5 Criminal Justice Act 1985. Special circumstances she sought to advance on behalf of Culpan were his age, the absence of any significant previous history of offending and the event itself including the absence of any action against the other members of the group. She submitted that the uncertainty as to the nature or extent of the role of Culpan was also a special circumstance. We have dealt with the last of those matters by upholding the Judge's findings on the sequence of events. As to the other matters they are not in themselves sufficient to give rise to special circumstances. Both men were identified as playing important roles in this disgraceful incident and the absence of others being brought to justice does not create a special circumstance on its own. A sentencing Judge might give some weight to it on an overall justice basis but here the principal instigators were before the court. We do not accept that the sentence was excessive for this offending having as it does serious long term implications for the health and well-being of the complainant.

Mr Laursen for Goodin argued that his situation differed from Culpan in that other than responding to Culpan's call for assistance he did not provoke any response from Mr Lean. However Goodin attacked Mr Lean without any attempt to ascertain what had occurred and without any attempt to break up any fight. In doing so he disabled Mr Lean and caused him to fall down exposing him to further assaults whilst on the ground. Such unthinking violence deserves no less a penalty than that accorded Culpan.

The Judge noted the number of testimonials for both young men but also observed that to some extent they cast blame for the incident on Mr Lean.

There are undoubtedly a number of promising aspects in the character of both appellants and the Judge acknowledged the positive matters put forward on their behalf. Violent assaults on persons in the streets at night are rightfully treated as very serious and this case was no exception. The sentences were well within the range available to the sentencing Judge. The appeals against conviction were not pursued and are dismissed. The appeals against sentence are dismissed.

**Solicitors:**

Crown Law Office, Wellington for Crown  
Govett Quilliam, New Plymouth for Appellant Goodin  
Nicholson Kirkby Sheat & Co, New Plymouth for Appellant Culpan