

Justice – What Price?

Debate surfaced in the media recently around questions of inequality in sentencing and the ability for the wealthy and privileged to “buy” justice and avoid prison. It was the sentencing of Nickolas Delegat (19), the son of the wealthy Auckland winemaker, Jim Delegat, Executive Chairman of the Delegat Group, which brought this debate to a head.

Nickolas Delegat was sentenced to 300 hours community work and ordered to pay \$5,000 emotional harm reparation for assaulting a police officer. The charge arose out of an incident which took place in March last year.

A number of journalists, including Paul Henry and Duncan Garner, adopted the position that the Judge Kevin Phillips was wrong in handing down what they believed to be a light sentence and accused him of going softly on the wealthy, white-skinned son of an Auckland rich-lister. There were also suggestions that the Judge was overborne by a big-city lawyer. These suggestions were generally ill-informed. The Judge’s decision was, in fact consistent with other cases for young, first-time offenders facing similar charges.

The Sentencing Act provides the framework that a sentencing Judge must operate within. Amongst other matters, the Judge must consider that the offending should be denounced and the offender be punished. The Judge must consider the need for deterrence.

However there were other factors which the Judge was also required to consider. The Judge was required to impose the least restrictive sentence which would meet the purposes and principles of sentencing under the Sentencing Act.

A number of important facts were omitted from the media reporting. The Judge clearly spelt out the relevant factors that he considered in determining the appropriate sentence. The Judge, in particular, highlighted Mr Delegat’s age and that it was his first offence. It was these factors, more than any others, which rendered imprisonment inappropriate. The fact that he had no previous record, as well as the fact that he had good support around him to assist his rehabilitation and prevent future offending, must be factored into any Judge’s decision.

The Sentencing Act provides that it is preferable to keep the offender in the community where appropriate. The court must impose the least restrictive sentence that allows justice to be done.

It is clear from the Judge’s decision not to discharge Mr Delegat without conviction that he properly weighed the aggravating features of the offending. He highlighted the “serious violent attacks”. But against this weighed the fact that Mr Delegat was only 18 years of age at the time; that he had mental health issues and was taking anti-depression medication; and that he had no previous convictions. Mr Delegat had also participated in the restorative justice process. He had paid emotional harm reparation to the victim.

Greg O’Connor, recently retired Police Association President, suggested that had the defendant been Polynesian boy and from more modest circumstances he would have been dealt with more harshly. Those factors are irrelevant. If it was in fact an 18 year old with no previous convictions who was of Maori or Polynesian decent, any Judge would have been obliged to impose a similar sentence.

Greg O’Connor also claimed that “big-city lawyers bully their way through the courts” and that “a lot of pressure comes on these Judges who have often not been high ranking lawyers themselves or have not been in the criminal court themselves.”

In fact, Judge Phillips practiced as a criminal lawyer for many, many years in this region and was highly regarded as a skilful practitioner. While Judges are open to persuasion by skilled counsel, the claim that Judge Phillips was bullied in Delegat’s case is simply ignorant.

Ultimately, this was an appropriate sentence, consistent with other similar cases. The media have a duty to report matters with at least some reference to reality. While this case has certainly fuelled debate, ultimately the public have been poorly served by largely ill-informed media hysteria.

Disclaimer: The opinions expressed in this article are those of the writer and do not purport to be specific legal or professional advice.



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