

R v Nathan DENNY-GARRETT

Blow CJ

2-May-2019

Comments on Passing Sentence:

Mr Denny-Garrett has pleaded guilty to a charge of wounding. He has an intellectual disability and significant mental health problems, and is therefore not responsible for his actions to the same extent as an ordinary person.

This crime was committed on the night of 16 June 2017. Nine days before that night, on 7 June, Mr Denny-Garrett was admitted to a psychiatric ward because he was contemplating suicide. He had discovered that his kidney function was failing, was unable to cope, and decided that he did not wish to live any longer or to be on dialysis. He spent a week in hospital, and had been out for only two days before committing this crime.

On 16 June he was amongst a group of people who were drinking very heavily at a residence in Glenorchy. The group consumed an enormous amount of alcohol. From time to time there were hostilities between some members of the group, involving angry words, pushing and punching. One of the people drinking together was the complainant in this case, Mr Lomas. He went to bed at about 9pm because he was intoxicated, but at some stage he woke up and started a fight with Mr Denny-Garrett. Before going to bed, the complainant had been involved in a fight with another member of the group. Mr Denny-Garrett had observed him fighting violently and tenaciously.

Mr Denny-Garrett pleaded guilty on the basis that he used excessive force in defending himself after the complainant menaced him with a knife, and after he had disarmed the complainant. None of that was disputed by the Crown, and I will therefore sentence him on the basis of that version of events.

After disarming the complainant, Mr Denny-Garrett vigorously stabbed him twice to the torso with the knife, inflicting two wounds. The less serious wound was a ragged penetrating wound immediately below the sternum. The other involved a penetrating injury to the left lobe of the liver, penetrating nearly all the way through that lobe. That wound was about 2 cm wide. It appears that he stabbed the complainant because he could not think of any other way to deal with the situation in which he found himself.

The complainant was taken to hospital and underwent surgery. He spent eight days in hospital, but fortunately made a straightforward physical recovery. He has been left with unsightly scars and psychological problems. His general practitioner has prescribed medication for anxiety and post-traumatic stress disorder.

Mr Denny-Garrett told one of his drinking companions that he had stabbed the complainant before leaving the premises. He was interviewed by police officers the next day, co-operated with them, and made admissions as to what he had done. He was arrested and held in custody until a judge granted him bail on 2 August 2017.

Mr Denny-Garrett was 25 years old on the night in question and is now 27. About three weeks before the night in question, on another occasion when he was very intoxicated, he visited a man he knew, became angry with him, and burned down his house. Last August I sentenced him to eight months' imprisonment for arson, and made a probation order to operate for three years from his release from prison. He was released a little over three months ago, on 31 January. It is unfortunate that this wounding charge was not disposed of while he was in prison.

I have received two reports relating to Mr Denny-Garrett from an experienced forensic psychiatrist. The first was prepared for the purpose of the arson charge and the second for the purpose of this wounding charge. It is clear that Mr Denny-Garrett has an intellectual disability. His IQ was measured at 69 in 2008. He had a dysfunctional upbringing. As a child he was exposed to abuse, and to a high degree of emotional and psychological neglect. He suffered a head injury when he was about 18. He has a history of problems involving alcohol misuse, substance misuse, and impulsive behaviour, particularly when under stress.

He has spent considerable periods in custody, both in the Ashley Youth Detention Centre as a minor and in prison as an adult. In those environments he has not made any progress towards developing problem-solving skills or other social skills. Last August the psychiatrist expressed the opinion that he needed a tightly monitored drug and alcohol rehabilitation program and long-term psychological therapy, tailored to his level of intellect. In his recent report, the psychiatrist has opined that the prison environment "would not be considered optimal for progress". It seems likely that Mr Denny-Garrett will continue to offend, probably in very serious ways, unless he makes

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Comments on Passing Sentence (continued):

substantial progress towards rehabilitation.

Sending Mr Denny-Garrett back to prison would almost certainly have no effect in relation to personal deterrence. Because of his intellectual disability and his mental health problems, this is not an appropriate case for me to impose a prison sentence designed to deter others from committing crimes of violence. Sending him back to prison now, only about three months after his release, could only interrupt and delay his rehabilitation.

He appears to have stayed out of trouble between his release in August 2017 and his remand in custody on the arson charge in August 2018. Since his release in January 2019 he has been living with his grandparents, abstaining from alcohol and drugs, managing his finances satisfactorily, and engaging well with his probation officer. He has been doing odd jobs for a friend of his grandfather. His counsel provided me with a letter from that man. It appears that he is prepared to act as a mentor and to help Mr Denny-Garrett get the tickets that he needs to become a machine operator and obtain work.

In my view the only appropriate sentence in this case is a wholly suspended sentence of imprisonment. There is no need for me to make a fresh probation order because the current one will remain in force until the end of January 2022.

Mr Denny-Garrett, I am not going to send you to gaol today. I am going to give you a suspended sentence. That means that if you stay out of trouble you will not go back to gaol. But if you commit any more crimes, then you can expect to go to gaol for a very long time. I convict you and sentence you to nine months' imprisonment, wholly suspended on condition that you commit no offence punishable by imprisonment for a period of three years.