PARTIES:	HILL, Edward Eric
	v
	PRYCE, Leonard David
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	14 of 1997
DELIVERED:	ALICE SPRINGS, 2 May 1997
HEARING DATES:	30 April 1997
JUDGMENT OF:	MARTIN CJ

CATCHWORDS:

Criminal law - Appeal and new trial and inquiry after conviction - Appeal and new trial - Appeal against sentence - Appeal by convicted person - Penalty manifestly excessive - Need for general deterrence must not be permitted to override in appropriate cases the effect of mitigatory circumstances.

REPRESENTATION:

Counsel:

Appellant:	Mr G Georgiou
Respondent:	Mr C Roberts

Solicitors:

Appellant:	NT Legal Aid Commission
Respondent:	DPP

Judgment category classification:	C
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Number of pages:	4

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

No. 14 of 1997

BETWEEN:

EDWARD ERIC HILL
Appellant

AND:

LEONARD DAVID PRYCE
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 2 May 1997)

Appeal against sentence. The appellant was convicted after trial before the Court of Summary Jurisdiction at Alice Springs on 26 March 1997 for that on 7 September 1996 at Alice Springs he unlawfully assaulted George Johan accompanied by a circumstance of aggravation, namely that Mr Johan suffered bodily harm and was threatened with a pocket knife. He was stabbed with the knife. The maximum penalty upon being found guilty summarily is imprisonment for two years (contrast the repealed provisions relating to the jurisdiction of Courts of Summary Jurisdiction set out in s122 of the

Sentencing Act (NT) 1995). He was sentenced to twelve months imprisonment to be suspended after six months.

The facts of the offence are straightforward. The appellant had had quite a few drinks and was aggressive towards the victim arising from unwarranted jealousy and passion. The knife, which the appellant took from his trouser pocket, was described as being a pocket knife, and the appellant said that he had "poked" the victim with it. It was accepted by the Magistrate that when he did that he had his thumb on the blade ensuring that it did not go too far inside the victim's body. The appellant raised the issue of self defence, but that was rejected as a justification for the assault. The victim was injured under his arm in the region of his ribs, and the wound required five stitches. He was not detained in hospital after the treatment.

As to the appellant, he was at the time a 48 year old Aboriginal pensioner, married in the Aboriginal way for eight years. He occasionally worked at the Kulgera Roadhouse, and apparently was well respected there. After this event, he and the victim renewed their friendship. He provided his version of the events to the police. He had no record of prior convictions.

His Worship was much concerned, and rightly so, with the frequency of crimes of violence with which that Court is very familiar. So is this Court. Particular emphasis has been made over and again of the condign punishment to be usually expected if weapons are used in criminal assaults. The outcome is unpredictable. General deterrence is of considerable significance. His

Worship adverted to all of that and the effect which the stabbing must have had upon the victim.

Turning to the appellant's circumstances, his Worship referred to the subjective facts and said that one could take a sympathetic view of him given his age and the fact that he had no prior convictions. He held there was no need for personal deterrence, that rehabilitation should receive some emphasis, but he expressed the opinion that once the matter was put behind him, the appellant would get on with his life and not come before the Court for similar offences. None of that is disputed.

Nevertheless, his Worship decided that there was no alternative than to impose a substantial term of imprisonment to take into account the particularly dangerous nature of the act involved.

I am satisfied that his Worship's discretion miscarried. The penalty is manifestly excessive. The maximum penalty was two years imprisonment and the nature of the attack was relatively minor, the consequences, as a result of the appellant's own action, not serious. He is a grown man with no priors and his Worship's view was that his event was an aberration. I do not resile from what has been said about the need for general deterrence in sentencing for offending of this type. However, it must not be permitted to override, in appropriate cases such as this, the effect of mitigatory circumstances. The sentence is quashed. The appellant is sentenced to three months imprisonment suspended forthwith. The period during which he is not to commit another

offence punishable by imprisonment if he is to avoid being dealt with under s43 of the *Sentencing Act* is twelve months.
