

NEW ZEALAND POLICE

POLICE V

MICHAEL JACK GREEN
CHRISTCHURCH

DOB: 15.08.1980
COB: NZ
OCC: Plasterer

CHARGE

Common Assault
CRIMES ACT 1961 SECTION 196
Penalty: Imprisonment for a term not exceeding 1 year

WITNESSES

1 x victim
3 x Civilians

SUMMARY OF FACTS

At about 4.30pm on Friday the 21st of December 2012 the defendant was at the Tai Tapu golf course attending a Christmas function with work colleagues.

The defendant and the victim were in the same group and the defendant became annoyed by the victim's behaviour. As the victim walked past, the defendant kicked him in the rear but struck him in the groin with a severe blow to the scrotum.

The victim collapsed and was taken to hospital where he required three-hour emergency surgery to deal with the injuries.

When spoken to by Police the defendant admitted the facts as outlined and in explanation stated that he became frustrated when the victim started interfering with fixtures around the golf course.

The defendant is a single man aged 33. He is currently employed full-time as a plasterer and has not previously appeared before the Court.

Reparation of \$1000 is sought for emotional harm to the victim.

N MACRAE
Constable C480

Plea in Mitigation

May it please Your Honour, counsel's name is Mrs Woodcock and I appear for the defendant. The Defendant is ready to proceed if the charge could be put to him.

Your Honour, the defendant accepts the facts outlined in the Police Summary and is extremely regretful for his actions. He has explained to me that his intention was simply to give the victim a kick in the backside after he was disrupting their game of golf. In the time leading up to the assault, the defendant tells me that the victim had been disturbing fixtures on the golf course, making jokes and kicking the tee markers away. The other players in the group had told the victim to go and pick up the tee marker and the defendant impulsively kicked him on the rear as he was walking past. In no way did the defendant anticipate that this kick would cause the victim to require hospital treatment.

The defendant has fully co-operated with the Police throughout this investigation and has entered a guilty plea at the earliest opportunity. He is currently employed full-time as a plasterer and lives with his partner. The defendant instructs me that he has never appeared before the Court before and feels very ashamed that his actions have caused such discomfort to the victim.

Your Honour, the defendant is willing to pay reparation to the victim in the sum of \$1000 as a contribution towards the physical and emotional harm that he has suffered but given the circumstances surrounding this incident, I would ask that the Court consider a discharge without conviction so that the defendant does not carry the permanent weight of a criminal record.

Judgement (excerpts from press report)

The application for a discharge without conviction was refused in the Christchurch District Court and he will have to pay the victim an emotional harm payment of \$1000.

Judge Tony Couch said the kick in the backside that caused a man to need emergency surgery had to have consequences.

Judge Couch said Green, a 33-year-old plasterer, deliberately kicked his victim, and witnesses described the kick as solid and hefty.

Judge Couch said Graham intended to do the victim harm, with a deliberate kick aimed at the mid-section of the complainant from the rear. "You do not kick someone with considerable force and expect no harm," he said.

Graham had to accept the consequences of the injury being serious, he said, so his application was dismissed and he was convicted and told to pay the victim the reparation offered.

Sentence Types and Combinations

Types:

Community-based

Community Service
Community Programme
Supervision
Periodic Detention

Reparation
Fine
Discharge without conviction
Conviction and discharge
Diversion

Full-time custodial

Corrective Training
Imprisonment
Preventive Detention

Combinations:

Reparation
Reparation + one community-based sentence
Reparation + one full-time custodial sentence

Fine
Fine + one community-based sentence
Fine + one full-time custodial sentence
Reparation + fine + one community-based sentence
Reparation + fine + one full-time custodial sentence

Periodic detention
Periodic detention + supervision



PLEAS IN MITIGATION

What is a plea in mitigation?

A plea in mitigation is presented to the Court when a defendant has pleaded guilty or is found guilty after a trial. It is an opportunity for the defendant to provide information to the Judge that is helpful when determining the appropriate sentence.

Background

Your client is to be sentenced by the Court. In general terms, the sentencing process is designed to do the following:

- Punish the defendant.
- Deter others from offending.
- Rehabilitate the defendant.
- Recognise the victims of the crime and “compensate” them where possible.
- Protect society.

What to include in a plea of mitigation?

A plea of mitigation should include information that will help the court to understand the defendant’s situation and encourage the court to give them a less serious penalty. Here are some factors that might be relevant:

- You have a good explanation for committing the offence
- You were not involved in the offence as much as some others (you were not the "ring-leader")
- It was a one-off mistake
- You are young and inexperienced
- You have no criminal record or if you have a record, it contains nothing similar to the present offence
- You have support from family and friends and they will help to ensure you don't get into trouble again
- You have done, are doing, or will do, things to help yourself so you won't get into trouble again e.g. no longer associate with certain people, do an anger management course, get debt management advice, or get treatment for alcohol or drug use problems
- You co-operated with police
- You have apologised to the victim of your offence
- You have a good work history
- You are currently employed
- You are responsible for supporting your family or other people
- You have current health issues that affect your ability to cope or comply with certain court orders (eg imprisonment or community work)



