

IN THE SUPREME COURT OF NEW ZEALAND  
GISBORNE DISTRICT  
GISBORNE REGISTRY

M. 25/72

BETWEEN CHRISTOPHER JOHN EADE

APPELLANT

AND POLICE

RESPONDENT

Hearing: February 18, 1972.

Counsel: Sheehan for Appellant  
Thorp for Crown

Judgment: March 17, 1972

JUDGMENT OF McMULLIN, J.

69

Appellant was charged in the Magistrate's Court at Gisborne with an offence under s.58 (1) (a) of the Transport Act 1962, namely, that he drove a motor car on a road while the proportion of alcohol in his blood exceeded 100 milligrammes of alcohol per 100 millilitres of blood. To this charge he pleaded guilty. The learned Magistrate thereupon fined him \$80 and ordered him to pay Court costs and medical expenses and disqualified him from holding or obtaining a motor driver's licence for a period of two years.

Appellant appeals on the ground that the period of suspension was excessive: there is no quarrel with the amount of the fine.

The relevant facts are fully set out in the summary signed by the learned Magistrate. This discloses that the appellant's car, which was stopped by the Police at 1.35 a.m. on the day of the offence, was stopped not because of the bad driving by appellant but rather because the Police suspected that the car might contain another person who had been responsible for some damage to a glass display showcase at a cinema. However, when the car was stopped for this reason, it was noticed that appellant's breath smelt strongly

of liquor, his speech was slurred and he was showing signs of intoxication. For these reasons he was required to undergo the breath test and to give a blood sample which, on analysis, was found to contain 168 milligrammes of alcohol per 100 millilitres of blood.

I was informed from the Bar on the hearing of this appeal —

- (i) that some Magistrates imposed heavy fines and light suspensions and others light fines and heavy suspensions;
- (ii) that the learned Magistrate had on occasions prior to the hearing of this case made pronouncements that because of its prevalence penalties for this kind of offence might be increased in the future (and indeed his statement of facts contains information to this effect);
- (iii) that the learned Magistrate would welcome some directions as to whether in future cases he should take account of the prevalence of the offence.

But, without the benefit of full argument on these matters, I prefer to confine myself to the circumstances of this case only. Nonetheless, what I propose to say about it may be of general application.

Section 30 (3) of the Transport Amendment Act 1970 provides that every person who commits the offence of driving with excess alcohol in his blood is liable to imprisonment for a term not exceeding three months or a fine not exceeding \$400 or to both and (without prejudice to the power of the Court to order a longer period of disqualification) the Court shall order him to be disqualified from holding or obtaining a driver's licence for a period of six months, unless the Court for special reasons relating to the offence thinks fit to order otherwise.

It will be seen that in prescribing these penalties the Legislature has given to the Court a great deal of flexibility in deciding upon that part of the penalty which

relates to imprisonment or a fine, but is much more definite in the matter of the period of suspension. In my view, where a penalty is nominated by a statute in the way in which it is here, generally that penalty is what the Legislature intends shall be imposed for what might be considered to be the normal kind of case. In Whittall v. Kirby (1947) 1 K.B.194 at 202, Goddard, L.C.J. said that of a corresponding section in the Road Traffic Act 1930 (Imp.) that the Act had left the penalty, whether of fine or imprisonment, entirely in the Court's discretion and that it was open to Justices, if they saw fit, to mitigate the penalty because disqualification would follow, but there was nothing in the Act to entitle them to substitute a more severe penalty as the price of refraining from disqualifying the offender (202). It is true that Lord Goddard was speaking of the situation where Justices had purported to find, as special reasons for not imposing a prescribed period of suspension, matters which could not properly be considered as such, but I think that the remarks of Goddard, L.C.J. provide a backing for the view that the period of suspension prescribed by the statute is the period which ought in the ordinary kind of case to be imposed. A similar view was expressed by Shorland, J. in Pinkerton v. Gould (1960) N.Z.L.R.645. That case concerned an offence of overtaking in a prohibited section of the road. In language not dissimilar to that used in the section under consideration here, the Legislature nominated a period of suspension of three months. The Court was given a general discretion, not limited to "special reasons", to fix a period of suspension other than three months. Shorland, J. drew attention to the fact that the Court had a general discretion (647). But, that distinction apart, the case is significant for the fact that it indicates that the discretion entrusted to the Court to fix a lesser period of suspension was only to be exercised if the circumstances properly so required and likewise, on the other hand, the discretion to impose a

longer period of suspension is to be exercised only if the circumstances so aggravate the commission of the offence that a longer period of suspension is required.

I cannot see that there are any factors in the present case which warrant the imposition of any period of suspension other than the period nominated by the statute. I therefore allow the appeal by quashing that part of the sentence which relates to the disqualification of appellant from holding or obtaining a motor driver's licence for a period of two years and in place of that period fix the period of six months as being the time for which appellant is disqualified from holding or obtaining a motor driver's licence. There will be no order for costs.

Solicitors: Brosnahan, Maude and Sheehan, Gisborne, for  
Appellant  
Crown Solicitor, Gisborne, for Respondent