

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.1299/84

BETWEEN BARRY GORDON KEENE

Appellant

AND

AUCKLAND CITY COUNCIL

Respondent

1678

Hearing: 2 November, 1984.

Counsel: No appearance for Appellant
J.R. Gresson for Respondent

Judgment: 2 November, 1984.

REASONS FOR JUDGMENT OF VAUTIER, J.

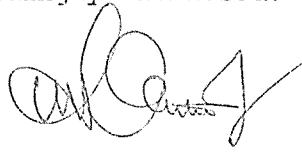
The appellant in this case, Barry Gordon Keene, was convicted in the District Court at Auckland on 23 August, 1984 following his pleas of guilty to two charges of driving while disqualified and a charge of driving with an excess breath alcohol concentration. In respect of these charges he was sentenced to six months imprisonment in respect of each of the charges of driving while disqualified and to three months imprisonment in respect of the breath alcohol charge, these sentences being concurrent. The sentences were imposed on 27 August following the obtaining of a probation report. He has appealed to this Court in respect of these sentences on the grounds that -

- 1) They are manifestly excessive;
- 2) He did not have the benefit of counsel's advice; and
- 3) Not enough consideration was given to his pleas of guilty.

It should be mentioned that an application was made for the grant of legal aid in respect of the appeal to this Court but the grant of legal aid was refused. The appellant was advised through the prison officers of this fact and of his right to make application to be present at the hearing fixed for today or to make written submissions if he so desired. The appellant has not chosen to take either course and I accordingly dealt with the appeal today on the basis of the material presented.

As to the point that the appellant did not have legal advice, the situation is clearly shown to be that he had explained to him at the hearing his right to legal aid and I am satisfied that he understood those rights and had the opportunity of exercising them and refused to do so. I am satisfied also that the appellant did not suffer any detriment in the circumstances through his not being represented by counsel. The situation presented to the Judge in the District Court was that this appellant had four previous convictions for driving while disqualified and he came before the Court when he had just completed serving a term of periodic detention in respect of two previous offences of this nature. I note that according to the probation officer's report the appellant himself stated that he would prefer to serve a term of imprisonment rather than a further term of periodic detention. It is abundantly clear in my view that the circumstances so revealed left the Court with no alternative but to impose a substantial term of imprisonment and the effective period of six months was in my view the shortest sentence which it would have been appropriate to impose.

The appeal is accordingly dismissed.

A handwritten signature in black ink, appearing to be 'W. G. Carter', written in a cursive style.

SOLICITORS:

Butler White & Hanna, Auckland, for Respondent.