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BETWEEN K MAILMAN
Appellant
AND AUCKLAND CITY COUNCIL
Respondent

Hearing: 9 November 1984
Counsel: Mrs Smith for Appellant
 Mr Gresson for Respondent
Judgment: 9 November 1984

(ORAL) JUDGMENT OF PRICHARD, J.

This appeal against sentence is directed only to the fine imposed on the Appellant on conviction of driving with excess blood alcohol. The penalty imposed was a fine of \$750 and the minimum disqualification of 6 months. The blood alcohol level was fairly high - 156 milligrams of alcohol per 100 millilitres of blood, which is approaching twice the specified figure of 80 milligrams.

The Appellant was not legally represented at the hearing in the District Court and it was not known to the Judge that in fact the Appellant made an endeavour - knowing that she was affected by alcohol - to get her flatmate, a Miss Smith, to drive her home. In point of fact Miss Smith did call to pick her up; but then there was some

dispute between the two ladies with the result that Miss Smith refused to drive the Appellant home whereupon the Appellant unwisely attempted to drive home in her own car.

The Appellant was convicted at the same time of driving in excess of 50 kph and in respect of that offence was fined \$200.

I think the fact that the Appellant did make a responsible attempt - albeit unsuccessful - to have herself driven home by another person can be regarded as a mitigating circumstance and that had the learned District Court Judge had the full circumstances before him he would not have imposed a fine which is, I believe, somewhat higher than is usually imposed on first offenders in cases like this.

The Appellant is a single woman employed as a post-woman. It is unlikely that she has means which would enable her to pay fines (and costs) amounting to about \$1,000 without considerable hardship. Taking all the circumstances into account (including the imposition of the \$200 fine on the speeding conviction), I will allow this appeal to the extent of reducing the fine on the blood alcohol conviction to \$150. There is, of course, no basis on which I can interfere with the 6 months disqualification.

Geoff Macdonald J.