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BETWEEN

McKEEVER

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 1 February 1984

Counsel: E. Bedo for Appellant  
N.W. Williamson for Respondent

Judgment: 1 February 1984

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ORAL JUDGMENT OF HOLLAND, J.

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The appellant was convicted in the District Court at Christchurch on a charge of driving a motor vehicle while disqualified from doing so. He appeals against his conviction. The point raised is a narrow one. It is not in dispute that he was a disqualified driver and that he drove a motor car on a road. His submission is that he should not have been convicted because his driving was in the circumstances without criminal fault on his behalf.

The evidence discloses that he was observed sitting in the driver's seat of a vehicle parked in a clearway area. The traffic officer concerned pointed to the clearway sign and gave an indication that he should move on. The appellant apparently shrugged his shoulders or shook his head and then received a second signal to move on by the traffic officer. He drove on. He gave evidence that he drove round the block or in fact two blocks and returned apparently to the clearway area moving past that and parking his vehicle one intersection beyond where he had originally been sighted.

The District Court Judge accepted for the purposes of the hearing the submission of counsel for the appellant that in the circumstances the traffic officer had exercised her powers under

section 68B(1)(d) of the Transport Act 1962 and had directed the appellant as being the person in charge of the vehicle to remove the vehicle from the clearway. Counsel for the appellant has drawn attention to the provisions of subsection (3) of section 68B which provides that "every person to whom any direction is given pursuant to this section shall comply with that direction and no person shall do any act which is for the time being forbidden pursuant to this section". Although there may be some doubt as to whether the traffic officer had given a sufficient direction under section 68B of the Transport Act to justify a prosecution for failing to comply with the direction under subsection (3), the District Court Judge was prepared to accept that as having been established and it would not be proper for this Court on appeal to find that point against the appellant. The issue accordingly is whether the appellant being a disqualified driver was justified in moving his vehicle when he received a direction from a traffic officer under the provisions of section 68B(1)(d) of the Transport Act. The offence of driving while disqualified is not absolute but in a case such as this where it is clear that the appellant knew he was disqualified and knew he was driving he must establish before the Court an absence of fault on his part. I am satisfied that he has not done so although the reasoning which I apply is not exactly the same as that applied by the District Court Judge.

The evidence given by the appellant as to what he did after receiving the direction was as follows:-

"I looked over and she signalled to me to move the car and I just looked at her. I thought "I can't" and I just shrugged my shoulders. There was no way to get across. It was 4.30 and there was plenty of traffic. I just shrugged my shoulders. I looked out for Rose. I thought "Come on" and then she signalled again. I thought "I had better shift it." I moved the car to St Asaph Street in the opposite lane. I turned right on St Asaph Street and went up St Asaph .

to Montreal Street. I thought "I had better go back" because I recognised Mrs Boats and thought that I should not have been driving. I went up Montreal Street and back down Lichfield Street. I went back past the Record Room. I took the first available park and walked back to the Record Room."

It is quite clear that when the appellant said he thought he had better go back he had an option of stopping his car lawfully well before turning back. On that ground alone I am satisfied that any direction given by the traffic officer under section 68B(1)(d) of the Act had ceased to have effect. I am, however, also not satisfied that a direction under section 68B(1)(d) of the Act would excuse the appellant in the first place. The requirement to observe the direction of the traffic officer to remove the vehicle does not in my view require a disqualified driver to drive the vehicle himself. He must take all reasonable steps immediately to remove the vehicle. If he is capable of driving the vehicle and lawfully entitled to do so then he must do that by driving the vehicle. If he is incapable of doing so or if he is not lawfully permitted to do so then he must immediately take steps for someone else to drive the vehicle off and in that respect, and provided that he does that, he will be complying with a requirement to move the vehicle. There is no obligation on him in the circumstances in which he was placed to drive the vehicle. As the District Court Judge found, he should have gone into the shop and got his sister who was merely making a purchase and whom he said was the driver of the car, to drive the vehicle. He did not do so. In the circumstances, in driving off as he did I am satisfied that he committed the offence with which he was charged and that he has accordingly been properly convicted. There is no appeal in respect of the sentence. The appeal against conviction is dismissed.

*C. D. Holland J.*