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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M. 484/84

1334

BETWEEN C MACKAY
Appellant

A N D MINISTRY OF TRANSPORT
Respondent

Hearing: 10 October 1984
Counsel: Appellant appears In Person
 Mrs A. Gaskell for the Respondent
Judgment: 10 October 1984

JUDGMENT OF ONGLEY J.

C MacKay appeals against the penalty imposed by Justices of the Peace in the Wellington District Court on a charge of carelessly using a motor vehicle. He was fined the sum of \$300 and ordered to pay \$20 in costs. The ground of his appeal is that the fine is excessive.

The circumstances of the offence as they would have been recounted to the Justices of the Peace, were that at about five minutes past six on the day of the offence the appellant was seen riding his motorcycle along The
 at a speed which the traffic officer considered to be very fast. The officer gave chase and he noticed the cycle slow right down then speed up again and he

assessed the speed at 110 kilometres an hour through a 50 kilometre area. He said that he then saw it turn to its right cutting the corner so that at one point it was on the wrong side of the road. He continued to have it in view when he thought it was about to hit the gutter because of its speed and the way the cycle turned the corner. When interviewed the appellant said he was on his way home and did not think his riding was that bad. He wrote to the Court saying virtually the same thing and that is what he says here today. He intended to enter a plea of guilty to the charge of carelessly using the cycle, but in his view the carelessness was limited to riding at an excessive speed through the restricted area. There again he says that in his view his speed was not as high as it was put by the traffic officer, but was something more in the vicinity of 90 kilometres an hour.

There is a memorandum on the file signed by one of the Justices of the Peace who says that on reference to his notes in connection with the case he finds that the duty solicitor acting for the defendant satisfied him that the amount of the fine that he imposed was appropriate having regard to the amendment to Section 60 of the Transport Act which now provides for a maximum fine of \$1,000. The appellant says that the duty solicitor did not act on his behalf at all and I accept that that was the case. If the duty solicitor did not act for the defendant I cannot see what

business he had in discussing the amount of the fine with the Justice of the Peace at all. In my view, even taking the version of the facts before the lower Court at its worst, the fine imposed was clearly excessive. No accident or collision resulted and it does not appear from the material that was before the Court that there was in fact any danger of a collision in the course of the driving that was observed by the traffic officer. It is not clear to me just what the carelessness consisted of, but the appellant pleaded guilty and it is too late at this stage to enter into any review of the facts.

Taking the facts, therefore, as they are set out in the traffic officer's note I find that the appeal should be allowed because I believe it to be much in excess of the amount of the fines which are usually imposed for offences such as these. In addition to that I think the appellant's circumstances have to be taken into account. He is 22 years of age, an apprentice mechanic receiving a weekly wage of \$144. He has some previous traffic convictions, but has never had his licence interfered with. Taking all those circumstances into account I think he should have been fined the sum of \$100, so I allow the appeal and substitute a fine of \$100 with costs \$20 for the fine imposed by the Justices of the Peace.

Solicitors

C.J. MacKay, Appellant

Luke, Cunningham & Clere, P.O. Box 10-357, Wgtn for Respondent