

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.11/83

644

BETWEEN MINISTRY OF TRANSPORT
Appellant

A N D RAUKAWA
Respondent

Hearing : 6th June 1984

Counsel : C.Q.M. Almao for Appellant
Miss P. Mills for Respondent

Judgment : 6th June 1984

(ORAL) JUDGMENT OF BARKER, J.

This is an appeal by way of case stated against the dismissal by the District Court at Hamilton on 8th December 1982 of an information against the appellant, charging him with driving whilst disqualified.

In the case stated, the District Court Judge states that the offence was alleged to have occurred on 16th April 1982 and the information was sworn on 18th October 1982. The District Court Judge determined that, by virtue of Section 14 of the Summary Proceedings Act 1957, the information was sworn more than 6 months after the alleged offence and was therefore a nullity. He states quite candidly in the case stated that his attention was not drawn to Section 195 of the Transport Act 1962 which provides that Section 14 of the Summary Proceedings Act should not apply with respect to

a prosecution for an offence under Section 35 of the Transport Act of driving whilst disqualified. This is in fact the situation; by virtue of Section 195(2) of the Transport Act 1962, there is no time limit for laying an information for driving whilst disqualified.

It is regrettable that the prosecutor did not draw this matter to the learned District Court Judge's attention. He cannot be expected to remember special provisions of this nature; the traffic officer prosecuting should have drawn the matter to his attention; he did not and the appeal must accordingly be allowed.

Miss Mills, who appears on legal aid assignment for the respondent, submitted that it would now be more than 2 years since the alleged offence and there could be hardship to the respondent in having to defend a prosecution of this nature so long after the alleged offence.

In my view, whatever the reasons for the delay, this is a matter which can be the basis of a submission to the learned District Court Judge, either as a reason for dismissing the information or in mitigation should the respondent be convicted when the matter is determined in the District Court. It is not appropriate for me, on a case stated appeal, to say what should happen. In fact, my only function is to remit the information to the District Court at Hamilton for determination on the merits with the opinion of this Court that the information is not statute-barred and that it should be heard by the District Court in its criminal jurisdiction in the normal way.

R. G. Barkin J.

The appeal is accordingly allowed.

SOLICITORS:

Crown Solicitor, Hamilton, for Appellant.

Miss P.A.B. Mills, Hamilton, for Respondent.