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IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

M.49/84 and M.50/84

1304

BETWEEN

MINISTRY OF TRANSPORT

Appellant

A N D

PHILLIP RIPIA formerly of
Te Kopuru, near Dargaville,
Labourer

Respondent

Offence: Driving Whilst Disqualified (2)
Dealt With: 16 February 1984 By: Paul DCJ
Sentence: 9 months Periodic Detention
12 months Disqualification

Appeal Hearing: 12 October 1984

Oral Judgment: 12 October 1984

Counsel: P J Smith for appellant
A Fairley for respondent

Decision: APPEAL ALLOWED - Periodic Detention quashed -
5 months imprisonment in lieu

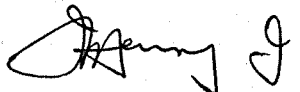
(ORAL) JUDGMENT OF HENRY, J.

These two appeals are against sentence and are brought by the Ministry of Transport in respect of two separate charges against the respondent of driving whilst disqualified. They relate to offences in December 1983 and January 1984 and on each of them, in addition to a period of disqualification being imposed, the learned District Court Judge sentenced the respondent to 9 months Periodic Detention. At that stage he already had a fairly impressive record, and included amongst those offences were three for

driving whilst disqualified in respect of which on 7 July 1983 he was sentenced to 6 months Periodic Detention.

It is apparent from the facts of the offence and from the details which have been supplied that the Respondent has virtually treated the Court's disqualification orders with contempt, and in my view his continued conduct in that regard required some substantial penalty. Taking everything into account I am satisfied that the sentence of 9 months Periodic Detention was, in all those circumstances, clearly inadequate and a sentence of imprisonment should have been imposed. However, as Mr Smith rightly pointed out to me, subsequent events have really taken over, as I am advised that the respondent is presently undergoing a sentence of 5 months imprisonment imposed on 23 August 1984 on a further charge of driving whilst disqualified - that offence apparently relating to a date earlier than those the subject of the present appeals. In my view that penalty more properly represents the penalty which should have been imposed here, but I do not think anything in excess of that should now be imposed.

Accordingly, both appeals will be allowed and the sentences of 9 months Periodic Detention quashed. In lieu thereof, there will be concurrent sentences of imprisonment for a term of 5 months, to commence as from 23 August 1984.



Solicitors:

Crown Solicitor, Whangarei, for appellant
Lynch & Atkins, Whangarei, for respondent