IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

No. M.56/84

BETWEEN ANTHONY HENRY COOPER

Appellant

A N D THE POLICE

Respondent

Hearing: 29 June 1984

Counsel: H. C. Hoogendyk for Appellant
D. C. McKegg for Respondent

Judgment: 15 August 1984

JUDGMENT OF ONGLEY J

This is an appeal against a sentence of imprisonment for concurrent terms of one year imposed in the District Court at Palmerston North on 18 April 1984 on charges of dangerous driving causing bodily injury (Transport Act 1962, S.55(1)) and unlawfully taking a motor-car (Crimes Act 1961, S.228(1)).

The summary of facts relating to the driving charge gives the following information:

> "At about 12.30 a.m. on Sunday, 30 October 1983, this defendant, together with others, gatecrashed a private party in a hall in Waihou Road, Levin. They were asked to leave, declined to do so, and he was one of the persons ejected from the Hall. The gatecrashers fled in an Austin Westminster motor-car, registered number CA 2076, driven by this defendant, Cooper, towards Roslyn Road.

> "He then reversed the car backwards at a dangerous speed into a large group of people standing on the roadway outside the hall. Fortunately all persons, bar one, were able to leap to safety and thus avoid impact.
>
> "Defendant immediately after impact accelerated away from the scene without lights, at a dangerous speed."

The person who was struck suffered a broken shoulder and a broken nose.

In explanation, the appellant said that he had been looking in his rear vision mirror while reversing down Waihou Road after seeing one of his mates being assaulted. He intended heading back to give his friend some assistance but his brakes failed. When he drove away he knew he had hit someone but did not wish to remain in what no doubt would have been a hostile atmosphere.

On the charge of taking the motor-car the facts were put very briefly by the Police. On 2 April 1984 he took a car parked outside an hotel at Foxton with the key on the dashboard and drove it back to Levin where he sold it for $100.00. The money was spent but the car valued at $300.00 was later recovered.

At the time he was sentenced on the two charges in respect of which he now appeals the appellant was also sentenced on a variety of other charges. The most serious of those drew a sentence of three months imprisonment. Other than to impose the sentences the Judge did not say very much except to comment on the penchant of the younger members of the Levin community to drink illegally in hotels. The appellant had two past convictions involving dishonesty and on four occasions had been found in a bar while under age. He had no previous conviction for offences against the provisions of the Transport Act 1962 until he came before the Court on

the charges now under review. As well as the charge which is the subject of this appeal, he was convicted of failing to stop and failing to report the accident in relation to the same incident. On those two charges he was discharged without penalty. This appeal is brought upon the sole ground that the sentence of imprisonment for one year on each of the two charges was excessive in each case.

On the driving charge the appellant would have been liable to a maximum of five years imprisonment on conviction on indictment. The offence falls under Section 55(1) of the Transport Act 1962 which provides for the case of death resulting from dangerous driving as well as bodily injury. A great variety of cases are dealt with under the section involving greater or lesser degrees of culpability in the manner of driving, injuries of all descriptions and, in the ultimate, the death of the victim. As might be expected, penalties imposed on conviction under the section are within a wide range.

I have not had available to me any statistics which would show the extent of the range of penalties imposed in the District Court for offences under this section and, lacking that advantage, I have turned to the offences in this Court which are normally those involving the death of the victim. The worst of those cases are, of course, charged as manslaughter. My understanding is that as a matter of practice driving offences are charged as manslaughter only when the conduct of the driver appears to involve a gross degree of culpability. More often than not, though the death may result from an apparently negligent piece of driving,

the charge is laid under Section 55(1). From the selected information on sentencing supplied by the Justice Department, I note that in the eleven cases of manslaughter referred to therein in the years 1982 and 1983, excluding two particularly bad cases in which a term of four years imprisonment was imposed, the penalties averaged about two years imprisonment, the least term being 15 months. Only one case of death resulting from driving brought under Section 55(1) of the Transport Act 1962 is referred to in the Department's publication. The offender was there found to have had an excess blood alcohol and a term of 10 months imprisonment was imposed. Most of the offenders in the cases to which I have referred were under 21 years of age but only one was younger than the offender in the instant cases. It may reasonably be supposed that as well as the nature of the driving, the age of the offender and his previous driving record were factors taken into account on sentencing.

On examining the circumstances of those driving cases involving death I have difficulty in reconciling the term of one year's imprisonment in the instant case with the penalties imposed in those cases. Certainly, it was a bad piece of driving which caused injury to the other man and, without mechanical evidence to confirm a brake failure, the Judge may not have been much impressed by the appellant's explanation. It seems likely that he intended to scatter the group which he thought was attacking his friend but I think it would be too harsh a conclusion to infer that he meant to hit one or more of them. The Judge did not comment on that aspect of the case so I feel at liberty to adopt my own view. Taking the more lenient view on that aspect,

therefore, and having regard to the appellant's age, his previous driving record and the moderately severe injuries caused to the person struck by the appellant's car, I am of the opinion that the term of imprisonment imposed was outside the range of penalties which an offence of this sort ordinarily attracts. It is excessive in my view, and accordingly I allow the appeal by quashing the sentence and imposing in lieu thereof a sentence of four months imprisonment. I also reduce the period of disqualification from 3 years to 2 years.

On the other charge the Judge appears to have sentenced the appellant under the misapprehension that he was charged with theft of the motor-vehicle. He may have gathered that impression from the summary of facts which indicated that the appellant purported to sell the vehicle. He was, however, charged under Section 228(1) of the Crimes Act 1961 which relates to an unlawful taking not amounting to theft. In other words, what is usually referred to as car conversion. It is probably that misunderstanding which accounts for the severity of the sentence, which in my view is excessive in the circumstances of the case for such a charge. I allow the appeal by quashing the sentence and imposing in lieu thereof a sentence of 4 months imprisonment.

Fitzherbert, Abraham & Co., P.O. Box 38, Palmerston North for Appellant.

McKegg, Walshaw & Co., P.O. Box 548, Palmerston North for Respondent.