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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

NLLR
M.299/84 (3) X
FN7

1052

BETWEEN NICKSON
Appellant

A N D MINISTRY OF TRANSPORT
Respondent

Counsel: T.R. Ingram for Appellant
 C.Q.M. Almao for Respondent

Hearing and
Judgment: 5 September 1984

ORAL JUDGMENT OF GALLEN J.

On 4 July the appellant was convicted on a blood alcohol charge. He was fined \$750 and ordered to pay Court costs \$20 and disqualified from holding or obtaining a driver's licence for a period of 18 months. It appears that as a result of a number of unfortunate coincidences, the appellant was not represented because counsel who was to deal with the matter was engaged in another Court. He appears to have elected to proceed himself and counsel now suggests that it may be that some of the material placed before this Court was not placed before the learned District Court Judge who dealt with the matter.

The appellant had a previous conviction for a similar offence which had occurred 9 years before. It had resulted

in a fine of \$175 and a period of disqualification of 1 year. The learned District Court Judge in sentencing, indicated that the length of time between the first and second offence was sufficient to avoid any prospect of the imposition of a sentence of imprisonment. I am informed however that the general practice is to impose imprisonment or some equivalent on a third, rather than a second offence and that in a case of a very bad driving, periodic detention would be considered before a prison sentence.

Effectively Mr Ingram bases his appeal on the fact that there was no criticism of the appellant's driving - no accident. He was in fact apprehended having left the vehicle. He says that the alcohol level was not high and that the general purpose of the disqualification period is to recognise the seriousness of the driving. He maintains that the general level of disqualification imposed in respect of second offences is in the vicinity of 9 months and maintains that a period of disqualification of 18 months is manifestly excessive.

As far as the fine is concerned, I am not prepared to disturb this. I cannot say that it is manifestly excessive bearing in mind the circumstances, one of which is the fact that it was a second offence even if the period between the two offences was a long one.

I do however, have some concern over the length of disqualification. I note that the previous period of disqualification was 1 year. In view of the fact that there was

no failure observed as to the appellant's driving and in view of the fact that he had a very favourable probation report, one would have assumed that he would receive a disqualification somewhere in the vicinity of that imposed as a standard, but perhaps reflecting the fact that it was a second offence. Accepting that the period normally imposed is 9 months, 18 months does seem to be out of line.

I think it would be appropriate to substitute a period of 1 year, which does reflect the fact that it is a second offence. Having regard to that, the appeal will be allowed to that extent.

R. G. Baker 1

Solicitors for Appellant: Messrs Evans, Bailey and Company,
Hamilton

Solicitor for Respondent: Crown Solicitor, Hamilton
