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(3) FM X

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

No. M.507/84

BETWEEN

O'CONNOR

1325

Appellant

A N D

THE CROWN SOLICITOR

Respondent

Hearing: 26 September 1984

Counsel: A.N.D. Garrett for Appellant  
B.M. Stanaway for Respondent

Judgment: 26 September 1984

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ORAL JUDGMENT OF HOLLAND, J.

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The appellant was convicted in the District Court at Christchurch on charges of driving a motor vehicle while the proportion of alcohol in his breath exceeded 500 micrograms per litre of breath (it was shown that the proportion was 550), of driving a motor vehicle while disqualified from obtaining a driver's licence, and of speeding. On the charge of speeding he was discharged. On the charges of driving while disqualified and driving with an excess breath alcohol level he was sentenced to one months' imprisonment and disqualified from driving for a period of 18 months from 28 February 1985 when his present disqualification expires. He appeals against that sentence and his counsel has submitted on his behalf that the sentence was, in the circumstances, excessive.

The appellant is a young man, 25 years of age, living in a de facto relationship with two children. Apart from his driving offences, he is otherwise of good character. However, on 12 May 1982 he was convicted of driving with an excess blood alcohol level and was fined \$250 and disqualified from driving for a period of six months. Twelve months later, on 21 July 1983, he was found to have again driven a motor vehicle with an excess blood alcohol concentration. He was then sentenced to periodic detention for a period of four months and disqualified from driving for a period of one year three months.

This is a sad case, as all these cases are, where a Court has to decide that a young man, of otherwise good character, has to go to prison, not only as an indication to himself that his behaviour must change, but primarily as a deterrent to others. Where, as here, it is a third charge of driving with breath alcohol and in addition is driving while disqualified the circumstances will be rare where a Court will not find it necessary to imprison.

My attention has been drawn to a similar case yesterday where I allowed an appeal against a term of imprisonment imposed on a young man also on his third offence. There were substantial differences in that case from this. Essentially the man was much younger, but the evidence was quite clear that he was a bad alcoholic, and prior to sentence in the District Court he had joined the Mahu Clinic for a 13 week intensive course of rehabilitation. I want to emphasise that what I did there was an exceptional case and was certainly not to be regarded as the norm. It may be difficult for this appellant to accept the situation, but he is much closer to the norm.

He instructed his counsel on this third occasion to submit to the District Court Judge that he did not have a drinking problem, and indeed the evidence supported that, and in so far as treatment as an alcoholic was concerned he was not in need of it. After having received this sentence of one months' imprisonment, he has now gone to the Alcohol Assessment Centre of the North Canterbury Hospital Board and is in a six week education group run at this Centre. I am sure that that will do him good and that he is very wise to have done that, but it does not indicate that he is in the same situation as that which was before me yesterday.

I have already indicated that offending of this kind must carry with it as a consequence that normally imprisonment will follow. I am satisfied the District Court Judge was concerned when he imposed this sentence, as indeed I am in confirming it. But people who continue to drive while affected by liquor must realise that this is an inevitable consequence at some stage. It is impossible to say that this sentence was either excessive or inappropriate.

The appeal is dismissed.

*W. D. Hollaway*