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IN THE HIGH COURT OF NEW ZEALAND M. 25/84

NEW PLYMOUTH REGISTRY

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BETWEEN KENNETH TERRENCE PRYOR

APPELLANT

A N D MINISTRY OF TRANSPORT

RESPONDENT

Judgment: 7 March 1984

Hearing: 7 March 1984

Counsel: C.B. Wilkinson for Appellant
J.A. Laurenson for Respondent

ORAL JUDGMENT OF CASEY J.

This is an appeal by Mr Pryor against sentences imposed on him in the District Court on 1st March, following his conviction on a charge of disqualified driving, driving in a dangerous manner and driving with an excess blood/alcohol level. The level was only 87 milligrams per 80 millilitres of blood, which is just over the limit. But of some significance is the fact that it is Mr Pryor's second conviction on this charge, the first having occurred in April 1978. It is his first conviction for disqualified driving, and related to a period of one year's disqualification imposed on him in March 1983, these offences having occurred on 19th November last. It is only too clear that the dangerous driving, which formed by far the most serious charge, occurred in his efforts to avoid apprehension from driving while disqualified and resulted in not only the car having been turned over and written off, but injuries to himself and a passenger and he attempted at the outset to deny that he had been the driver, thereby compounding the irresponsibility of his previous conduct.

The learned Judge in the Court below sentenced him to imprisonment for three months on the blood/alcohol and dangerous driving charges, and to one month on driving while

disqualified, to be cumulative on the others, so that effectively he was sentenced to four months' imprisonment. Mr Wilkinson's submissions on appeal were directed principally at the proposition that the Judge had not paid sufficient regard to Mr Pryor's personal circumstances. Undoubtedly I accept that a custodial sentence will have a very severe effect on the business which he has built up and maintained through enterprise and hard work, and I have a testimonial and a report from his accountant as to the likely consequences, which would almost certainly involve liquidation of his company. A perusal of the judgment demonstrates that the Judge paid very full regard to the effect of such a sentence, but having regard to Mr Pryor's past record and what must be conceded as a quite irresponsible attitude to his obligations, he felt that he had effectively come to the end of the road and could not expect to buy his way out by a substantial fine because he had the means to pay it.

I think the Judge's approach on this matter was correct. Various sentences have been passed on Mr Pryor previously and his record of driving and other related or generally anti-social offending, demonstrates that he has not learnt from the lenient treatment and that it would be pointless to extend to him a similar leniency in this case, having regard to the quite outrageous driving in which he indulged on this occasion and which was fully reported in the statement from the Traffic Officers who followed him. This sort of driving is simply not to be tolerated and anybody indulging in it demonstrates a total lack of irresponsibility to himself and other users of the road, meriting the sentence which the Court passed on this occasion. Indeed, Mr Wilkinson conceded that were it not for his personal circumstances, there could be no criticism of the sentence.

I am in agreement with the learned Judge that this case has gone beyond the bounds where the Court can pay much regard to personal circumstances and inflict a penalty other than the one which is clearly called for by the gravity of the offence. The only matter which gave me concern is the fact that on two of the counts, the excess blood/alcohol and

the dangerous driving, as I read the judgment maximum sentences of three months each were imposed. Courts have generally taken the view that maximum sentences are to be reserved for the worst possible cases of their type. Certainly the excess blood/alcohol does not of itself fall into this category, even taking into account that it was the second offence since 1978.

However, on re-reading the account of the driving and the learned Judge's comments and description of it and its consequences, I am not disposed to interfere with the sentences of three months. To do so would involve only a relatively minor reduction which would simply be tinkering with the sentencing discretion of the Judge. It is clear that this Court is entitled to interfere only if it is persuaded that the sentence was clearly excessive or inappropriate, and Mr Wilkinson's full and able submissions have not taken me to that stage. The appeals are accordingly dismissed.

M.E. Casey J.

Solicitors:

St. Leger Reeves Middleton Young & Co., New Plymouth, for Appellant
Crown Solicitors Office, New Plymouth, for Respondent