IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY

M.No.39/84

BETWEEN BARRY JOHN PIDGEON

Appellant

AND PERIODIC DETENTION WARDEN

Respondent

Hearing: 31 August, 1984.

Counsel: J.G. Konijn for Appellant
N.A. Walsh for Respondent.

Judgment: 31 August, 1984.

(ORAL) JUDGMENT OF VAUTIER, J.

The appellant, Barry John Pidgeon, pleaded guilty in the District Court at New Plymouth on 10 August, 1984 to five charges of driving while disqualified and one charge of failing without reasonable excuse to attend the Centre in pursuance of a sentence of periodic detention which had been imposed in the District Court at Christchurch on 12 August, 1983. He was sentenced in respect of these offences to nine months imprisonment in respect of the charges of driving while disqualified and three months imprisonment in respect of the breach of the terms of periodic detention.

In the notice of appeal the grounds are advanced that the penalty of three months imprisonment, being the maximum penalty for the offence of breach of the terms of periodic detention, was excessive and it is further said that the Court did not take into account the fact that four months which, it seems, should have been a reference to six months of the original

nine months term of periodic detention, had been served before any breach by way of failure to report occurred.

In supporting the appeal which is directed solely to the imposing of the three months sentence as cumulative upon the nine months sentence Mr Konijn has referred to a statement in Halsbury's Laws of England, 4th Edn., Vol.11, para. 495 relating to the practice as regards the imposing of a term of imprisonment where the maximum period for the offence is a lesser period than that in respect of another offence in which sentence is imposed at the same time. No authority is quoted for the passage referred to and counsel was not able to refer me to any New Zealand authority applying this principle. In any event, even if such a principle should be applied in New Zealand I would not in the circumstances here regard that as providing sufficient grounds for interfering with the sentences which were imposed in this particular case.

Mr Konijn has also referred to the question of it being necessary when sentences are being imposed in respect of different offences to have regard at the end for the totality of criminal behaviour involved and to look at the maximum term to be served with that matter in mind. This was, of course, a reference to the principle adverted to in the decision of the Court of Appeal in R. v. Bradley (1979) 2 NZLR 262. The situation in the present case is that the appellant, when he came to be sentenced to periodic detention for a period of nine months was being there again sentenced in respect of the offence of driving while disqualified. He had at that time, as the record produced shows, three previous convictions for driving while disqualified

and also a number of other convictions in respect of driving offences as well as in respect of other matters. The record thus indicated that there was indeed, as the Judge in his sentencing remarks here commented, an indication of blatant disregard by this appellant of the laws of this country and of his obligations to society in respect of the matter of the driving of motor vehicles. In this situation the imposing of a sentence of nine months periodic detention in lieu of the imposing of a term of imprisonment in the District Court at Christchurch on 12 August, 1983 was clearly a very lenient sentence indeed. This appellant, however, showed his complete contempt for the leniency thus accorded to him not only of course by breaching the terms of the periodic detention thus imposed and clearly, on the summary presented, doing so quite wilfully and intentionally, but he again proceeded likewise to show his contempt for the law in proceeding on all these occasions to drive while still disqualified. The situation thus clearly called for imprisonment and in my view the imposing of a substantial term of imprisonment. If there is any principle which made it necessary or desirable that the period of imprisonment imposed in respect of the failure to comply with the periodic detention requirements should have been imposed concurrently then in my view the sentence of imprisonment in respect of the other offences should certainly have been more than nine months imposed and if I were to accede to counsel's proposals I would simply deem it proper to increase the sentence in respect of the driving while disqualified to a period of 12 months. I think even that in the circumstances of this case would be a very moderate sentence. However, the decision in Bradley certainly does not oblige the Court in all instances to impose

concurrent sentences. It is, of course, not directed to that particular question but simply to the question of having regard for the overall blameworthiness of the conduct. Here we have two completely separate offences and in my view it would have been quite wrong for a sentence to be imposed which would be indicative of no operative sentence at all being imposed in respect of the breach of periodic detention.

The appeal is accordingly dismissed.

SOLICITORS:

Till Greiner Lee & Co. New Plymouth for Appellant.
Govett Quilliam & Co. New Plymouth for Respondent.