

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. M.608/84

1642

BETWEEN RAYMOND RARERE

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 28 November 1984

Counsel: W. Rosenberg for Appellant
 A.M. McIntosh for Respondent

(ORAL) JUDGMENT OF COOK J.

The appellant was sentenced in the District Court on a charge of driving while disqualified and the District Court Judge noted, in particular, that it was the second occasion in which the appellant had come before the Court on such a charge within a period of a year. He noted further that on two occasions the appellant had been sentenced to non-residential Periodic Detention. The Judge was satisfied that a stage had been reached where there must be a custodial sentence and he imposed a term of three months imprisonment in addition to further disqualification of licence.

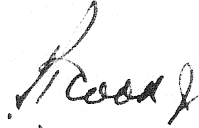
I have read the probation report and I do note that it is suggested there that the offence was unwise rather than wilful. Counsel for the appellant has urged that imprisonment was inappropriate and that this was a case that could have been dealt with adequately by a term of periodic detention. He has stressed that the defendant did not act in contempt of the law; that he had engaged a driver to take him to work in the ordinary way; that the employment of the first man so engaged was terminated but a new man had been appointed just before

the occasion when the offence occurred; that it was a car in which the gears do not work well and that, when the new driver was having difficulty, the appellant got into the driving seat and drove for a short distance. This has been supported by affidavits which have been put before me and which were not, of course, before the District Court Judge and which, on the face of them, support what I am told as to the situation on that day and as to the problem with the car. There is also a certificate from some garage confirming that there was difficulty with this particular car so far as the first gear is concerned. It has been stressed further by counsel that breaches of this nature may be serious or they may be of less importance. In this case what was done was done in order to enable the person engaged to drive the car, in fact to do that in the place of the appellant. I have been told, also, of his own employment that he has developed; that he employs staff; that his business is getting on successfully and that he is required to run this business and has an obligation to creditors.

For the Crown, it has been recognised that in a situation such as this there must be a dilemma whether it be imprisonment or not. It is accepted that the apprehension of the appellant did take place a short distance from his home but, as pointed out, he must have driven for that short distance. Also I am reminded that a financial penalty, according to the probation report, appears inappropriate. In such circumstances it is submitted to me that imprisonment cannot be said to be inappropriate. There is evidence before me that was not before the District Court Judge. With as many convictions for disqualified driving as in this case, it will always be a problem whether a man should be sent to prison or not. The importance of deterrence on the one hand is very great. This, unhappily, is a much too common offence. On the other hand, there is the need to keep offenders in the community if that may reasonably be done. Standing alone, I do not regard this as a serious breach and the problem arises from the number of breaches there have been. However, on due

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consideration, I think this is a case where the appellant could be kept in the community and I propose to substitute a period of non-residential periodic detention, but I stress that he would be very unwise indeed if he were to offend again in this way. The sentence of imprisonment is quashed and, in lieu of that, the appellant is sentenced to six months non-residential periodic detention at 84-86 Brisbane Street. He will be in custody for 9 hours on one occasion in each week and for 4 hours on every other occasion as directed by the Warden. He will first report at 6 p.m. on Friday next, the 30th November and thereafter as directed. The disqualification must, of course, stand.

A handwritten signature in dark ink, appearing to read 'H. C. ...', is written over the right side of the typed text.

Solicitors:

W. Rosenberg, C/o M.J. Knowles, Christchurch, for Appellant
Crown Solicitor's Office, Christchurch, for Respondent.