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IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

NO. INV.M.78/84

1408

BETWEEN JOSEPH GORDON REID

Appellant

A N D THE POLICE

Respondent

Hearing: 31 October 1984 (IN CHRISTCHURCH)

Counsel: P.B. McMenamin for Appellant
 B.M. Stanaway for Respondent

(ORAL) JUDGMENT OF COOK J.

The appellant came before the District Court on a total of seven charges - on the 12th of May 1984 he was charged with driving while disqualified and also with excess breath/alcohol. A few hours later, on the morning of 13th May, he was apprehended again and charged with the same offences. On the third occasion, the 26th of June, he was again charged with these two offences and then on the 7th July, charged with driving while disqualified. The District Court Judge, having noted that it was a serious case and the defendant a persistent offender, considered it was not appropriate to deal with him (as his counsel had suggested was possible) under Section 48A of the Criminal Justice Act. In respect of each of the charges of disqualified driving, the appellant was sentenced to 12 months imprisonment, on the breath/alcohol charges seven days, all terms to be concurrent and he was disqualified for a further two years from 17th November 1984.

He has a deplorable record of offending over the

last ten years and I see that in 1978 he was twice convicted of disqualified driving and was imprisoned then for a short period. In 1979 there was a further charge and a term of imprisonment. In 1981, following charges of driving while disqualified, dangerous driving and excess blood/alcohol, he was sentenced to six months non-residential periodic detention.

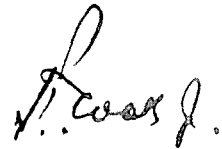
I have read the probation report and I note the handicaps which he has had to undergo so far as his home life is concerned. It is clear from the report that he is capable of being a good worker if only he would leave alcohol alone. He has shown some efforts in that direction but, unfortunately, has broken down from time to time. If ever he is to make any progress in life at all he must quit himself of the habit permanently, but he must resolve to do that himself.

Counsel for the appellant has referred to the District Court Judge's remarks on sentencing. He has stressed that it is very apparent that the appellant has two major difficulties, liquor and motor vehicles, but pointed out that since 1981 the appellant has managed to redeem himself to some degree. Such offences as there were during that period, and there were two, are not related to driving. He has pointed out that the last major sentence was non-residential periodic detention but it may well be, as counsel for the Crown suggests, that that was a particularly lenient one. I am told that he has had assistance from Alcoholics Anonymous in the past and that he has arranged for assistance when the present term of imprisonment has expired. One can only hope he will avail himself of it. It is suggested that there may have been a misunderstanding on his part as to the date of expiry after disqualification but, if so, I cannot think it should have lasted beyond the first occasion upon which he was stopped by the traffic officers. It has been urged by counsel that the disqualification period should be less than the two years imposed.

On the other hand, the Crown has pointed out the

nature of the charges and the period of time over which they were committed. Mention has been made of the previous list and the fact that, if the non-residential periodic detention was a sentence of particular leniency, the appellant does not appear to have availed himself of it.

There is no doubt that offending of this nature must be treated seriously and warrants a stiff sentence. It was certainly a bad outbreak on the part of the appellant, but it did come after three years when he had not been charged with any offences of this nature. It does seem that he has made efforts to grapple with his problem and I think it is proper that he should receive some encouragement. There is no doubt that imprisonment is appropriate, but I think in all the circumstances the term is excessive. I reduce the term of imprisonment to eight months to be followed by probation for one year and in that respect allow the appeal. I make no change in the period of disqualification.



Solicitors:

McMenamin & Sons, Christchurch, for Appellant
Crown Solicitor's Office, Christchurch, for Respondent.