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IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY

M.306/84

1058

BETWEEN PETER KEITH RHODES

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing : 5th September 1984

Counsel : M.J. Cameron for Appellant  
P.J. Morgan for Respondent

Judgment : 5th September 1984

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(ORAL) JUDGMENT OF BARKER J

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This is an appeal against a sentence of 6 months' imprisonment imposed on the appellant in the District Court at Hamilton on 20th June 1984. In addition, he was disqualified from driving for a period of two years.

The offence for which the appellant was sentenced was his sixth for driving whilst disqualified or contrary to the terms of a limited licence. As noted by the District Court Judge, he had previous convictions for dangerous driving, reckless driving and careless driving. As recently as December 1983, he was convicted of driving in a dangerous manner and was sentenced to Periodic Detention for 5 months. On the occasion in question, the District Court Judge noted that the appellant was stopped by a traffic officer at 11 p.m., driving with no lights on his vehicle.

The District Court Judge noted in favour of the appellant that he had performed well whilst serving Periodic Detention sentences but stated that the real point at issue was whether

Court orders are going to mean something. He noted that the Court has an obligation to ensure that its orders are obeyed and that the appellant had shown a complete disregard for the Court's orders over a period of years.

Mr Cameron for the appellant today stressed that the appellant must have had some psychiatric problem because in all other respects, he is a good citizen. He has, in the words of the probation report, "a fatal fascination for motor vehicles". He is apparently now estranged from his wife; he has a young child and another is expected; his marriage has suffered strains since his imprisonment.

Mr Cameron submitted that the Court should take account of the personal circumstances of the appellant and should endeavour to do something for him because it appears that all else has failed and there must be some sort of psychiatric reason why he is offending only in this particular area. As to that of course, there was before the District Court Judge and before me no evidence of psychiatric impairment of the appellant. In my view, the sentence imposed by the District Court Judge was lenient. Whilst I am not minded to increase it, if he had imposed a slightly higher period of imprisonment and certainly imposed a greater period of disqualification, it would be hard to say that such steps constituted a manifestly excessive sentence.

For offending of this nature, in my view two matters must be uppermost in the mind of the sentencing Court: First, the punishment of a flagrant and persistent offender who has shown a total disregard for the Court's order. It is not just a question of the Court's order. One must look behind the purpose of the Court's order. Disqualification orders are usually not imposed unless there has been some very bad driving of a sort which presents danger for the public such as drunken driving, reckless driving and the like. So that, in making a disqualification order, there is an element of protection of the public.

Secondly, the question of deterrence should be rather high in the list of considerations on sentencing a persistent offender on the charge of driving whilst disqualified. As I noted to counsel in the course of argument, there are many thousands of people up and down the country who receive sentences of disqualification from driving; most of them are ordinary citizens who have no other brush with the law and who, in the main, adhere to the terms of their disqualification rigorously. The offence of driving whilst disqualified is also a difficult one to detect. Traffic officers cannot be expected to stop every motorist to see whether he or she is a disqualified driver. Therefore, when the Court has before it a persistent offender for driving whilst disqualified, the sentence imposed must be more than a mere token one, if only to act as a deterrent to others who may be like-minded.

Whilst the District Court Judge was entitled to bear in mind the personal circumstances of this offender which have been eloquently outlined today by Mr Cameron, I consider that there is absolutely no basis for saying that the sentence was manifestly excessive; the appeal is and must be dismissed.

*R. J. Bowen J.*

SOLICITORS:

Cameron & Hinton, Hamilton, for Appellant.  
Crown Solicitor, Hamilton, for Respondent.