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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M. No. 549/84

1647

BETWEEN PATRICK WHEROA TAHUHU

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 2 November 1984

Counsel: K.J. Grave for Appellant
N.W. Williamson for Respondent

Judgment: 2 November 1984

ORAL JUDGMENT OF QUILLIAM J

This is an appeal against sentences totalling 18 months imprisonment and 10 years disqualification on three charges of disqualified driving and one charge of driving with excess blood alcohol.

On 8 and 14 October 1983 the appellant was seen to be riding a motor cycle. On each occasion he gave a false name and address when interviewed. On 14 January 1984 he was driving a car and was involved in an accident at an intersection. He was found to have a blood alcohol level of 91 milligrams of alcohol per 100 millilitres of blood.

The appellant is now just 24 years of age. He has, on nine previous occasions, been convicted of disqualified driving and on three previous occasions of alcohol related driving offences. Because of these offences

he has been continually disqualified from driving since February 1979. His most recent sentence for disqualified driving was in March 1983 when he was sentenced to imprisonment for six months. He had previously served a longer sentence for the same kind of offence.

The grounds of appeal, which the appellant himself submitted, were primarily that the sentence would deprive him of the opportunity of seeing his infant child and this has been repeated on his behalf by counsel. In addition, it is said that there appears to have been some possible disparity, or at least that the appellant would see it that way, between his sentence and that imposed on another offender who had been sentenced as well, however, on charges of theft and other offences. That other offender also received 18 months imprisonment, but in his case the period of disqualification was two years.

As counsel has recognised it is really not helpful, unless the situation is very clear, to try and compare sentences in entirely different cases, and I do not feel that I can derive a great deal of assistance from that in this case although I should observe that the other case to which counsel has referred is one I am required to deal with later today and so I have read such information as is available on it on the file concerning that case.

The sentences imposed were six months on each of the three charges of disqualified driving, all cumulative, and one month on the excess blood alcohol charge concurrent with the last of the six month terms, and so the question is whether a total of 18 months is manifestly excessive for these four offences looked at together. The District Judge took the view that the appellant was an incorrigible offender and a danger to the public. Whatever gloss it is possible to put on that comment, in substance one has to

acknowledge that it is basically correct. The appellant has shown a determination to flout the order of the Court. At the time of the latest probation report he claimed to have conquered the urge to drive but it appeared he had acquired another vehicle which he chose not to disclose to the probation officer. There can be no doubt at all that a lengthy term of imprisonment was inevitable in this case.

The aspect of the appeal which has caused me principal concern is the period of disqualification which now extends to a date in 1998, 14 years hence. Very long periods of disqualification are generally self-defeating in that they leave the offender with no immediate hope of being able to drive again and so encourage him to drive anyway. Having regard to this appellant's appalling record and the undoubted danger he presents by reason of his continued alcohol abuse and his determination to drive, there was, I think, really little alternative. It must be observed that, in terms of the law, he is free to apply at any time for removal of the disqualification and if he can show that the time has arrived when he can safely be allowed to drive again then I should imagine that such an application would be given sympathetic consideration.

Having regard to the particular circumstances of this case, however, the appeal must be dismissed.

Solicitors: K.J. Grave, CHRISTCHURCH, for Appellant

Crown Solicitor, CHRISTCHURCH, for Respondent

