IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

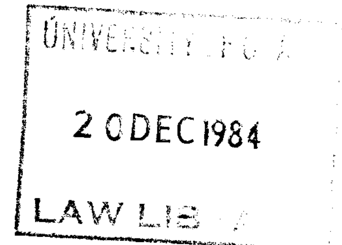
No. M.479/84

BETWEEN DANIEL NEIL BARRETT

Appellant

A N D MINISTRY OF TRANSPORT

Respondent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Hearing: 25 September 1984

Counsel: P.H.B. Hall for Appellant
B.M. Stanaway for Respondent

Judgment: 25 September 1984

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ORAL JUDGMENT OF HOLLAND, J.

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The appellant pleaded guilty in the District Court to a charge of driving a motor vheicle while the percentage of alcohol in his blood exceeded 80 mg per 100 ml. The medical evidence indicated that on this occasion the proportion of alcohol in his blood was 133 mg to 100 ml. He had twice previously been before the Court for excess breath or blood alcohol offences, once on 20 May 1981 and once on 13 October 1982. On the first occasion he was fined $300 and disqualified from driving for a period of six months. On the second occasion he was fined $300 and disqualified from driving for a period of nine months. On this occasion he was sentenced to six months' periodic detention and was disqualified from driving for a period of five years. He appeals against both aspects of his sentence and his counsel submits that in the circumstances, considering both aspects, each of the two forms of punishment imposed were excessive.

His submission is essentially on three grounds. First that the circumstances of this particular offence did not call for a stern sentence. There was no accident, there was no other person involved and although the percentage of alcohol in the blood was considerable it was not as great as many. Those submissions have merit.

The second ground is that the District Court Judge failed to have any or to have sufficient regard to the circumstances of the previous offending. It is apparent that the District Court Judge did have regard to the previous offending because he has noted on the file that on the first charge the percentage of alcohol in the breath was 550 which was only 50 micrograms in excess of the authorised limit. On the second occasion where a blood sample was taken it was 82 ml per 100 mg which again was only 2 ml over the limit. The fact, however, that the District Court Judge has recorded those figures indicates that he took them into account and I do not accept the submission of counsel that he failed to give sufficient weight to them. It may well be that in comparison with some, the appellant was unfortunate on both of those occasions, but the fact remains that he has, within three and a half years, twice previously been before the Court where he has been driving a motor vehicle and he has obviously taken more liquor than the law permits. The fact that he has failed to reform his ways seems to me to be far more important than the fact that he was only just on the wrong side of the border line on the previous two occasions. A person who has such a conviction must realise that if he is caught again driving when the liquor he has taken results in either his breath or blood indicating a surplus beyond the legal requirement that a serious punishment must follow.

The third ground was that in the public interest some consideration should be given to this man because he has unfortunately offended a great deal in the past and has spent a lot of time in prison and has shown signs of reform. I have some considerable doubts about those signs of reform but apparently they persuaded the District Court a year ago that charges of burglary and receiving on separate occasions should be dealt with leniently. I do not wish the appellant to think for one moment that in relation to this charge I am considering his other criminal record adversely to him. But I see nothing in his criminal record and his conduct over recent years to indicate any treatment apart from the normal as being justified in his case.

In those circumstances he must well have expected a sentence of imprisonment. The District Court Judge took the lenient view that imprisonment would not be imposed and he imposed a term of six months' periodic detention. That may be a month or two longer than another Court would have regarded as adequate but it has certainly not been shown to be excessive or inappropriate and is certainly not out of line or beyond the range for offending and offences of this kind and it would be quite wrong for this Court to interfere with that aspect of the sentence on appeal.

I turn now to the five years' disqualification. A Court imposing sentence on a man of this kind is placed in a considerable quandry. There is a tremendous obligation to the public and to users of the highway to ensure that they will be protected from people driving motor vehicles when affected by liquor. Short, however, of depriving a person of driving a motor vehicle for life it is inevitable that at some period or other an

offender will drive again. Notwithstanding this man's persistent offending, he has certainly not reached the stage where a Court would consider it appropriate to deprive him from driving for life or indeed for a period getting anywhere near the expectation of his working life. He is a self-employed painter and paper hanger. To that extent his licence is almost a necessity. Because it is his third offence, whatever period of disqualification imposed carries with it a statutory forbidding of the granting of a limited licence so that there is no possibility of such a person obtaining a licence permitting him to drive solely while working.

Undoubtedly in practically every case of sentencing a sentence must be imposed giving the prisoner or defendant at some stage a light at the end of the tunnel. When one considers the inevitability of release of a person from those restrictions, care must be taken not to place the restrictions for a greater period than is shown to be necessary.

The penalty must have considerable relationship to the offence. I hasten to say that I am not speaking here of a person where the evidence demonstrates that he has an alcoholic problem apart from the fact that he has these two previous convictions, nor am I dealing with a case of grossly careless or dangerous driving. Nor am I dealing with a case where someone who has suffered either personal injury or property damage. It is to be hoped that this man will learn the error of his ways by the substitution of a term of periodic detention for what he has previously had by way of a fine. It is also obvious that the continued offending indicates that his disqualification for driving must be for a greater period than has been the case in the past but

not for as long as 5 years. Because he is self-employed and because of the factors relating to the offence that I have just dealt with, and more importantly because he is having to suffer the punishment of periodic detention, I am satisfied that a period of disqualification of 18 months would have been sufficient for the public interest on this particular offence.

The appeal is accordingly allowed. The sentence of six months' periodic detention is upheld. In lieu of him being disqualified for a period of five years he is disqualified for a period of 18 months.