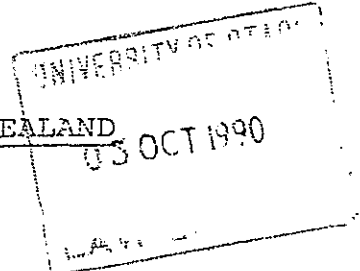


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P.D./C.S. ✓

IN THE HIGH COURT OF NEW ZEALAND



M. 1751/83

AUCKLAND REGISTRY

BETWEEN

BRUCE WILLIAM TIMMINS

APPELLANT

A N D

AUCKLAND CITY COUNCIL

RESPONDENT

Judgment: 23 February 1984

Hearing: 17 February 1984

Counsel: M.J. Beattie for Appellant
J. Gresson for Respondent

Hearing: 23 February 1984

Counsel: Miss Simmonds for Appellant
Miss Latimer for Respondent

ORAL JUDGMENT OF CASEY J.

I adjourned this appeal from 17th February to obtain an assessment of Mr Timmins' suitability for a sentence of community service, following submissions made to me by Mr Beattie on the appeal against a sentence of four months' Periodic Detention imposed in the District Court for his second blood/alcohol offence. Mr Beattie urged before me (as he had done to the learned Judge below) that a sentence of Periodic Detention would mean the loss of this Appellant's employment as a car salesman, as he said it was essential that he be available to work on Saturdays. He handed me a letter from Mr Timmins' employer confirming this which, of course, may throw a different light on the situation from what might have been apparent to the Judge in the Court below. He certainly (and quite rightly) rejected the proposition that this offence should merely be dealt with by another fine. Mr Timmins had his warning and the concentration of blood/alcohol in this case was 160/100 which was substantial.

It appears that the alternative sentence of

community service may not have been proposed to or considered by the learned Judge. In the circumstances, I think that a sentence of Periodic Detention - well deserved as it might be - would bear heavily on the Appellant through the loss of his employment, in which he is a highly regarded and responsible salesman. The alternative sentence, while still keeping him in the community, imposes a regime of work of a suitable sort and could be regarded as an adequate punishment for a second offence of this nature. The other option would be a short term of imprisonment, but with the community based services now available, I think this should be kept only as a last resort. The report from the probation officer of 22nd February indicates that the Appellant is suitable for a sentence of community service and there is appropriate work available for him.

While accepting the appropriateness in other circumstances of Periodic Detention, I consider the appeal should be allowed in the special circumstances of this case. The sentence of Periodic Detention is quashed and in its place I impose a sentence of 130 hours community service.

M. Casey J.

Solicitors:

Wilson Henry Martin & Co., Auckland, for Appellant
Butler White & Hanna, Auckland, for Respondent