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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

1049

BETWEEN J APERAHAMA
Appellant
A N D MINISTRY OF TRANSPORT
Respondent

Counsel: Appellant in Person
C.Q.M. Almao for Respondent

Hearing and
Judgment: 5 September 1984

ORAL JUDGMENT OF GALLEN J.

The appellant appears in person in support of her appeal against sentence imposed in respect of an excess breath alcohol charge. This is not a particularly easy matter to deal with because I do not have available to me the remarks made on sentencing.

Mrs Aperahama was fined \$425 and ordered to pay Court costs \$20 and disqualified for a period of 7 months. Mrs Aperahama is concerned over an allegation that the material given to the Court and on which she says the penalty was based, is incorrect, but essentially her main concern is her inability financially to meet the penalty imposed on her. She does not

query the disqualification.

I am indebted to Ms Mills who went to some trouble to investigate the matter and made some submissions on Mrs Aperahama's behalf although she had not been instructed to do so. It appears clear that Mrs Aperahama's concern is that her family responsibilities are great and her financial abilities limited. While these are matters about which one may have personal concern, I cannot take them into account in relation to a penalty imposed on a charge of this kind. I cannot say that the penalty which was imposed was manifestly excessive and I am not therefore in a position to allow the appeal, which will be dismissed.

However I do accept that there are special circumstances here and that it is an appropriate case for Mrs Aperahama to be able to pay the amounts owing by way of instalments and those instalments should be assessed as far as possible as not to affect responsibilities to her family. There is no reason why the children should suffer as a result of an offence which they did not commit. I am informed that the normal figure which the Court considers appropriate for a fine of this nature by instalments, is \$10 p.w.. Mrs Aperahama does not appear to be able to meet such payments without there being affects on her children. I accordingly indicate as my view that when consideration is given by the Court authorities to payment of the fine by instalments, that a lesser figure

be considered and as far as possible her obligations and educational proposals for the children be taken into account in arriving at the figure which is ultimately arrived at. I direct that the fine be paid by instalments to be assessed on a basis which reflects the foregoing comments.

R. J. Baker

Solicitor for Respondent: Crown Solicitor, Hamilton
