

IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

M No. 127/84

1463

BETWEEN ALLEN KEVIN BISHOP

Appellant

A N D POLICE

Respondent

Hearing: 23 November 1984

Counsel: A.R. Burns for appellant
G.A. Rea for respondent

(ORAL) JUDGMENT OF SAVAGE J.

This is an appeal against sentence. The appellant was sentenced in the District Court at Napier on 23 October to three months imprisonment and he was also sentenced to 12 months probation with a special condition that he undertakes such psychiatric or psychological treatment as was directed by the probation officer. He was also sentenced to be disqualified from holding a driver's licence for a total period of 18 months. The three months imprisonment and the probation were imposed on one charge of dangerous driving and one charge of assault on a traffic officer. There was also another charge of failing to stop on which the sentence was only a period of disqualification from holding a driving licence.

The circumstances were that on 18 August the appellant was involved in a high speed car chase in Napier city late in the evening. When he was eventually stopped by a traffic officer he got out of the car and advanced on him and threatened him with a short iron bar that he had. He then decamped but was later arrested by the police.

The appellant is 21 years of age. Generally speaking, he appears to have conducted himself in such a way that he has not been guilty of any offending but there is one area in respect of which he has offended frequently. It appears that once he gets into a motor car his whole manner changes and from the list of previous convictions he has it appears that he has committed just about every offence one could commit in connection with driving a car, save, it must be noted, he has not had any offences which involve driving while affected by alcohol. Mr Burns for the appellant has made a point, and it is a good point, that in 1981 he was given a sentence of periodic detention in respect of a reckless driving charge and from that time down until this offence there had been no other offences in connection with the use of a motor vehicle. However, these offences are, as Judge Sheehan said, serious ones.

Mr Burns, in supporting the appeal, which was based on the ground that the sentence of three months imprisonment was excessive in all the circumstances, urged particularly that the learned District Court judge had apparently failed to give adequate weight to the requirements of s 13(b) of the Criminal

Justice Act, which directs the Court to give attention to the desirability of keeping offenders in the community rather than sentencing them to imprisonment. However, it does not follow that because the learned judge did not make any specific reference to the section he did not have it in mind. I am sure that he did, because it is one of the best known provisions in the Criminal Justice Act and is certainly one which is constantly referred to by counsel in making their submissions on sentence.

The principles on which this Court acts on appeals against sentence are clear. The Court cannot allow an appeal on sentence unless it is shown that the sentence was clearly excessive or clearly inappropriate. I do not think it can be said that this sentence was inappropriate and indeed Mr Burns did not develop his argument expressly on that basis, though the primary submission that the judge had failed to have regard to s 13(b) was no doubt based on the proposition that a sentence of imprisonment was inappropriate. In my view, the reason such a sentence is not inappropriate is that there were two charges, one of dangerous driving and one of assault on a law enforcement officer. In my view, it is generally appropriate for persons who assault law enforcement officers while carrying out their duties to be given a custodial sentence. In this case the learned judge obviously considered that in the light of the appellant's previous record this particular piece of dangerous driving was such that imprisonment was the appropriate penalty. So far as the other

basis is concerned I do not think it can be said that three months imprisonment is excessive in the circumstances.

Mr Burns had urged that the sentence should more properly have been one of periodic detention, together with a term of probation, and so meeting the requirement of submitting to psychiatric assessment because of this particular appellant's personal history and the fact that he obviously has psychological difficulties in relation to the use of motor vehicles. In my view, the sentence imposed with its term of probation and the special condition makes an appropriate provision for the appellant to have a psychological assessment and to be given assistance in that direction, and the term of imprisonment was appropriate. The term was not excessive for the offence of, first, assaulting a traffic officer and, secondly, for the kind of driving that he had embarked on; so the appeal is dismissed.