



IN THE HIGH COURT OF NEW ZEALAND

M. 996/84

AUCKLAND REGISTRY

1109

BETWEEN

BELL

APPELLANT

AND

POLICE and MINISTRY OF
TRANSPORT

RESPONDENT

Judgment: 24 August 1984

Hearing: 24 August 1984

Counsel: Wadsworth for Appellant
Wyeth for Respondent

ORAL JUDGMENT OF CASEY J.

This is an appeal against a sentence on a number of driving charges imposed on Mr Bell on 12th June 1984 in the Auckland District Court. He pleaded guilty to two counts of driving while disqualified, two of excess blood alcohol and one of failing to accompany a traffic officer, and a charge of careless use. On the two latter he was convicted and discharged. On the first episodes of disqualified driving and excess blood alcohol of 11th December 1983 he was fined \$500 on each. On the second episodes of disqualified driving and excess blood alcohol on 25th February 1984 he was fined \$750 on each, and he was disqualified overall for two years and sentenced to six months Periodic Detention in respect of each charge concurrently. The blood alcohol levels were very high - 295 and 330 were the figures and, even taking into account the fact that he was an alcoholic, these are matters to give the Court considerable concern in themselves. But of most concern, of course, was the repeating of these offences after his earlier convictions on blood alcohol

charges and for a number of other quite serious driving offences. The explanation is that this young man of 22 had become an alcoholic from his time in the Navy and Mr Wadsworth made extensive submissions to the effect that the combination of the \$2,500 in fines and six months Periodic Detention was manifestly excessive, even having regard to the seriousness of these offences. This young man's trouble had been detected by the authorities he had been made to undergo alcoholic treatment under the supervision of the Navy, which circumscribed his liberty considerably and he was also an inmate of the Wolfe Home for some time before the sentence was imposed.

It is perfectly obvious that offences of this gravity would normally involve a substantial prison sentence after such a past record and this was the initial inclination of the learned Judge, but he took into account the alcoholic condition, the treatment that he had undergone and the other circumstances of the support he was receiving from the Navy, to deal with him in a way that would keep him in the community. I myself would have regarded a fine of this magnitude in association with an otherwise perfectly proper sentence of Periodic Detention to be on the high side. But I am informed that Mr Bell has paid the fine and costs, so notwithstanding the apparently limited means that were expressed in the March probation report which was before the Judge, he seems to have had the ability to meet the fine. Certainly his income from the Navy indicates that it is not something that he would have difficulty in recovering from. I think it was properly within the sentencing discretion of the Judge. I think he applied his mind quite properly to the ameliorating effects of the alcoholic treatment and the other circumstances in deciding not to send him to prison, and imposed what was a reasonable to severe alternative sentence instead. I am not disposed to interfere with it. I do not think it is

manifestly inappropriate or excessive and for these reasons, notwithstanding Mr Wadsworth's cogent submissions, the appeal must be dismissed. He will report to resume his Periodic Detention at 6 p.m. on Friday 31st August.

Mr. Casey

Solicitors

Gubb McNiece & Vlatkovich, Auckland, for Appellant
Crown Solicitors Office, Auckland, for Respondent