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(3) FWT

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M 498/84

No. M-479/84

1324

BETWEEN

BROWNE

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 25 September 1984

Counsel: R.A. George for Appellant
B.M. Stanaway for Respondent

Judgment: 25 September 1984

ORAL JUDGMENT OF HOLLAND, J.

This young man pleaded guilty in the District Court to a charge of driving a motor vehicle with an excess proportion of alcohol in his breath and of driving while disqualified. He was convicted on 24 March 1982 of driving with excess blood alcohol, fined \$375 and disqualified from driving for a period of nine months. Ten and a half months after that conviction he again drove with an excess proportion of alcohol in his breath. That offence occurred on 8 February 1983, although he was convicted on 25 March 1983. He was then fined \$500 and disqualified from driving for a period of 18 months. On this occasion he was before the Court for driving while disqualified which in itself could well have warranted a sentence of imprisonment. Far worse than that, he drove a motor vehicle when he must have been severely affected by alcohol because the proportion of alcohol in his breath was 1100, more than twice the permitted limit.

Were it not for his own personal circumstances, there can be no doubt that the appropriate sentence for that offending was a term of imprisonment and no doubt a term of imprisonment of more than the one month that was imposed upon him. He was in fact sentenced to one months' imprisonment and he was disqualified from driving for a period of twelve months. It was clearly the intention of the District Court Judge that the twelve months disqualification should be in respect of each of the two charges and I am satisfied that he intended that sentence to operate concurrently.

The circumstances of the offender are sadly not as unusual as one might have thought. At the age of 20 he has shown that he is an alcoholic. He has, however, taken steps in this regard, although far too late. It is not insignificant that his undergoing this course of treatment for alcoholism took place after his third offending but it took place before sentencing. He gave up his job for a period of twelve weeks to undergo a course at the Mahu Clinic.

It is impossible for this Court to say that a sentence of one months' imprisonment for an offender of this kind in relation to an offence of this nature was excessive. That, however, is not the only issue before the Court and the Court must consider whether in all the circumstances it was appropriate. Here is a young man, 20 years of age, having embarked upon and almost completed an apprenticeship at a trade, holding a good job, capable of serving a useful purpose in the community, particularly now that he recognises that he suffers from a disease that must prevent him

from taking alcohol again in any circumstances. I can acknowledge that to a 20 year old who has lived a full social life such a recognition could cause a good deal of depression as it has, and will still create tremendous temptation for him. The public are crying out for the Courts to impose harder sentences on people who abuse their right to drive a car by doing so when affected by liquor and that of course comes when someone like you, and I am addressing my remarks now to the appellant, kills someone or maims them which may well happen if you continue to drink and drive. But you ought to know now that sadly if you continue to drink, quite regardless of driving, you are capable of causing tremendous harm not only to yourself but to others.

I am satisfied that the sentence was inappropriate because greater regard should have been given to this man's recognition of his problem and to the assistance that he has been given by his family, and he ought to know that the Courts are sympathetic to people who endeavour to help themselves. That sympathy cannot go on forever and it may well be that the District Court Judge felt it had gone on too long. However, I am satisfied that it is in the interests of the community that even a 20 year old, who is one year older than the years of minority when the provisions of the Criminal Justice Act require the Courts to give careful consideration before deciding it essential that a person be sentenced to prison, should be kept out of prison if possible.

The period of disqualification from driving was a lenient one indeed. But I do not feel justified in interfering with it because here the problem will be cured if the appellant recognises his problems as an alcoholic and behaves accordingly. He

has promised everyone he will. History shows that those promises are often made and not always kept. That, however, is still not a ground I think for at this stage imposing a sentence of imprisonment on him. I doubt if there is any useful purpose in imposing probation because having undergone this course of treatment at the Mahu Clinic it is to be followed up with counselling from Alcoholics Anonymous and if the counselling from that body is insufficient to help this prisoner probation will not help him either.

He has got to be punished. I am satisfied that this is the type of offence and the type of offender for which the sentence of periodic detention was regarded as a suitable alternative for what would otherwise have been one of imprisonment. Brown, I want you to know that most people have a lot of sympathy for you and they recognise the problems you have got ahead of yourself. We are giving you the benefit of all the assurances that you have given. Life may seem pretty miserable to you at the moment but there is a lot of good things you have got going for you and the main one is the family that rally round and help you. Your future is entirely in your hands but there is no way the Court can be indulgent to you again. You are going to be given a chance and I hope you won't abuse it.

The appeal against sentence is allowed. The sentence of one months' imprisonment is quashed and in lieu thereof you are sentenced to three months' periodic detention. The Registrar will advise you of the date and place for reporting for that. The period of disqualification of twelve months' is to remain as was imposed in the District Court.

G D Holland J