IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. M.143/84

BETWEEN FORD

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 18 April 1984

Counsel: C.M. Ruane for Appellant
A.M. McIntosh for Respondent

(ORAL) JUDGMENT OF COOK J.

The appellant pleaded guilty to two charges in the District Court - refusing to permit a sample of blood to be taken, and driving a motor vehicle while disqualified. These offences were committed at approximately 7 p.m. on a Friday evening when the appellant was seen driving a vehicle not travelling in a straight line and thereby attracting the attention of an officer. He did not stop but was recognised by the officer who pursued him and caught up with the car which the appellant was driving in a shopping centre. When he did so, he found the appellant and a passenger in the process of changing places. The appellant was affected by drink. He refused a breath-screening test or to accompany the officer. He also refused an evidential breath test and when a blood test was required, refused that also.

He had been disqualified following a charge of excess breath/alcohol and dangerous driving in July 1983. The offences are serious ones of their kind warranting a sharply deterrent penalty.

As to previous offences, over the last five years there have been a substantial number of offences under the Transport Act. While a great number of them may be relatively unimportant in themselves, the total appears to indicate that the appellant had a complete disregard for the law in this respect. There are convictions, also, for other offences, but I do not think the District Court Judge took them into account, nor do I think they need be considered.

I have read the Probation report. I note that the appellant is 20 years of age and is in employment; what the Probation Officer says and the recommendations made. The District Court Judge clearly regarded the offences as serious and considered it necessary to impose a term of imprisonment. Also, a long period of disqualification, but no point is taken in respect of that. Counsel for the appellant has suggested that the list of traffic offences is not as serious as the District Court Judge suggests, but I doubt if that submission can be made good. He does point to the fact that over the last couple of years, the situation improved to some extent, but those years do include driving at a dangerous speed and driving with excess blood/alcohol. There have been other disqualifications, but those have been for offences not directly under the Transport Act. So far, he has been fined in respect of the latter type of offence, though he has been sentenced to non-residential Periodic Detention for other offences.

In support of the appeal, but not before the District Court Judge, a letter has been put in written by the appellant's supervisor at the firm where he is employed. I am informed that this was not solicited but offered by the supervisor; I have read that and there are matters in it which I think can properly be taken into account on this appeal. I am told, further, that since the District Court hearing, the appellant has sold his car and has taken steps recommended by the Probation Officer in relation to his problem with alcohol.

The question must be whether imprisonment is appropriate in this case. If it is, six weeks certainly cannot be said to be manifestly excessive. Non-residential Periodic Detention is certainly an alternative to imprisonment and was recommended by the Probation officer. It was considered by the District Court Judge but rejected by him.

In the ordinary course, for offences of this nature, it could not be said that imprisonment is not appropriate. In the present situation, however, had the District Court Judge had the facts that have now been put before me, including the letter from the supervisor, I think it is possible that he might have regarded the imposition of non-residential Periodic Detention as a proper deterrent. While I am reluctant to vary the order made by the District Court Judge, I think this additional information does warrant my doing so.

Mr McIntosh has suggested that possibly some order could be made, no doubt in conjunction with a probation order, that the appellant not own a car for some specified period. There is merit in that suggestion, but the appellant must learn to stand on his own feet and to obey the law. I do not think, on consideration, that he should be prevented. But he is disqualified for three years, there will be no cause for him to drive and he certainly would be unwise to own a car and to run any risk of being in breach of that disqualification. He should take a clear warning, that if he offends again in relation to motor vehicles, driving them when disqualified, driving when he has taken drink, then he will undoubtedly go to prison and not for a short term.

The appeal is allowed and in place of the sentence imposed in the District Court, he is sentenced to six months non-residential Periodic Detention to be served at the Periodic Detention Center, 84-86 Brisbane Street. He will be in custody for nine hours on one occasion in each week and for four hours on every other occasion as directed by the Warden. He will first report at 6 p.m. on Friday, the 27th April and

thereafter in terms of the written order given to him by the Warden.

Solicitors:
Weston, Ward & Lascelles, Christchurch, for Appellant
Crown Solicitor's Office, Christchurch, for Respondent