IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.392/85

BETWEEN TWISS

Appellant

927

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 27 August 1985

Counsel: A. Lee for Appellant
R.E. Neave for Respondent

ORAL JUDGMENT OF HERON J.

This is an appeal against the sentence of the District Court at Christchurch on 1 July 1985 in respect of a sentence of two years' disqualification together with a fine of $600 for driving whilst having an excess blood alcohol level. The blood specimen revealed a concentration of 164 milligrams per 100 millilitres. The appellant was apprehended because the right rear tail-light was apparently out. In other respects his driving does not appear to have excited any attention.

The appellant was dealt with in the Traffic Court list on the above date and the sentencing Judge has declined to make any comments on the sentence. It may well be that in the busy list he is unable to recall accurately the reasons for the penalty that he imposed, but without doubt it had to be a penalty which marked the Court's disapproval of an individual who had been charged with a similar offence in October 1981 and an earlier offence some ten years before of driving in a dangerous manner.

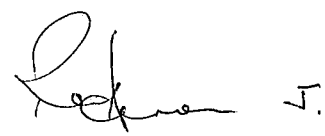
The appellant discloses by way of an affidavit that he is self-employed as a building contractor and is now faced with an almost impossible situation in endeavouring to maintain his business whilst being unable to drive and having to attend at job sites with his driver when both of them could be better

employed individually. Well that is a consequence Mr Twiss will have to accept, as clearly he would be aware that a further offence of this kind would result in disqualification and more than simply the minimum period he received previously.

The question is whether two years is excessive in the circumstances. He is prevented from applying for a partial licence because until October 1986 five years would not have run enabling s.38 to be invoked. Mr Neave for the Crown says that notwithstanding that, after six months' disqualification there is a right to apply for removal of the disqualification and in that section a further right to treat such application as an application for a partial licence under s.38.

For the appellant it is submitted that a long period of disqualification of this kind simply is counter-productive and invites an inevitable urge to re-offend. Well the orders of the Courts must be complied with and that submission is unattractive. Mr Neave reminds me that I should not indulge in tinkering with the penalty but the view that I take of this matter, and having had the opportunity to look at the affidavit and the circumstances surrounding this appellant, it seems to me that a little more than twice the minimum would have been appropriate in this case and that two years is inappropriate.

I am therefore prepared to allow this appeal to the limited extent of reducing the period of disqualification from two years to fifteen months and increasing the fine from $600 to $800.



Solicitors:
Cameron & Co., Christchurch, for Appellant
Crown Solicitor, Christchurch, for Respondent