IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M21/85

BETWEEN ALLAN JOHN EAST

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 26 February, 1985.

Counsel: J.S. Fairclough for Appellant
K.P. McDonald for Respondent

Judgment: 4 MAR 1985

JUDGMENT OF HARDIE BOYS J

This is an appeal against sentence on two charges, one of driving whilst disqualified and one of driving with excess breath alcohol (700 microgrammes). It was submitted to the District Court Judge, on the basis of evidence presented to him prior to sentencing, that this was a case where special reasons relating to the offence made it appropriate for the period of disqualification to be less than the minimum - six months on the breath alcohol charge and 12 months on the disqualified driving charge, for this was not the appellant's first offence of that kind (Transport Act 1962, s 30(1)(c) and (3)(d)). The Judge however did not think that there were special reasons,

although he accepted that the facts amounted to mitigating circumstances which he took into account in fixing the financial penalty on each charge. The appellant was fined $250 on each and on each he was disqualified for 12 months.

The evidence before the Judge was that the appellant was a front seat passenger in a Mini car driven by one Bain. Bain drove out of the Shirley Motor Lodge carpark into Marshlands Road and pulled up alongside a Falcon car so that he could speak to its occupants. The Mini was thus double-parked, with Bain leaning across the appellant in order to conduct his conversation. This proved difficult because the Falcon's window was much higher and the Mini's window was of the sliding kind. Therefore to facilitate the conversation the appellant and Bain changed places. The appellant had not long been sitting in the driver's seat when a Ministry of Transport vehicle pulled up behind, Bain told the appellant it was there and the appellant thought he ought to move the car and therefore drove it forward some 20 m into the nearest parking space ahead.

The Judge thought this changing of sides for the stated purpose "an implausible exercise" but addressed what is the fundamental point, namely whether the only driving alleged and the only driving which could be proved, namely the distance of 20 m from the double parked position to the parking space, was a special reason in terms of the statute. In concluding that it was not, the Judge said "it is not a case of an emergency where there is some sudden unexpected event with no one else

being available to drive the vehicle. The defendant chose to drive when he must have known what the situation was".

Mr Fairclough was able to point to two English cases where a similar situation had been considered. The first is James v Hall [1972] RTR 228 where after attending his daugher's wedding the defendant made some social calls upon a number of friends, consuming some alcohol as he went. At his last call he was invited to stay the night. Having accepted this invitation, some time after midnight he went into the street to move his car from where it was parked outside his friend's house, into the driveway. Lord Parker CJ, commenting that "these questions of special reasons are extraordinarily difficult", concluded that there was a special reason in the case before him: for the defendant was "only trying to drive a few yards to remove his car from the highway into his friend's driveway". This case was considered in Coombs v Kehoe [1972] RTR 224. There a truck driver had spent some time at an hotel and had then gone out to move his truck to a more suitable space for it to remain parked overnight. He travelled about 200 yards, reversing the length of one street, turning into another for a short distance, and then turning into a main road before reaching the parking space. The Court declined to treat this as a special reason. Lord Widgery CJ said that James v Hall ought to be confined to its own particular circumstances - where a man drives literally a few yards "in circumstances in which his manoeuvre is really unlikely to bring him into contact with other road users at all and thus

unlikely to produce a source of danger" - and not treated as recognising a general principle that the fact that a driver is parking his car is itself a special reason. I would add that to accept any general principle of this kind would be to fly in the face of the wording of the section. For as Lord Goddard CJ said in Whittall v Kirby [1974] KB 194, 200: "The limited discretion must be exercised judicially. The reasons inducing the Court to exercise it must be special, and special is the antithesis of general".

The special reasons must relate to the offence, and thus what may be special for one offence may not be for another: cf. Anderton v Anderton [1977] Crim. LR 485. Here, there were two distinct offences. In the case of the offence of driving with excess breath alcohol, there is a close parallel to James v Hall. Not only was the distance short, but there was no likelihood of the appellant's driving being a source of danger, and that must be a critical factor. It is not however of any relevance to the offence of driving whilst disqualified. In Lower Hutt City v McAlpine & Ors [1972] NZLR 168, 172, Beattie J observed that special reasons in blood-alcohol cases could occur only on rare occasions. The same is true of cases of driving whilst disqualified. The District Court Judge seems to have thought that special reasons may in both kinds of case be limited to situations of emergency. But with respect I do not think it is appropriate to limit the statute in this way. Whilst an emergency may be the most obvious example, many others are afforded by the cases: James v Hall is one,

and see the summary in Graham's Law of Transportation pp 7-6 to 7-8.

It seems to me that A special reason must be one that goes to the essential purpose of the statutory provision in question. In the case of an alcohol-related driving offence that purpose is the prevention of danger to the public. And so in Coombs v Kehoe that was the distinguishing element between that case and James v Hall. (Note also Edmonds v Police [1970] NZLR 267, a dangerous driving case). The offence of driving whilst disqualified has as one of its prime purposes insistence upon obedience to orders of the Court. Thus the degree of defiance involved in the driving will be a most relevant factor in any consideration of special reasons relating to that offence, in the same way that the degree of danger to the public is most relevant to an alcohol related driving charge.

The evidence in this case discloses no defiance. The car was driven when the appellant knew a traffic officer was standing close by. He seems to have acted almost instinctively, as if complying with an unspoken direction to move the car from the incorrect position in which Bain had left it. It is that factor, added to the short distance the car was moved, that perusades me that there are special reasons in this case relating to the offence of disqualified driving. That factor also to my mind makes this an even stronger case than James v Hall in relation to the offence of driving with excess breath alcohol.

In all the circumstances, I consider that the statutory minimum is excessive in this case and therefore allow the appeal and reduce the period of disqualification (which has been running from 4 January 1985, when the previous period expired) to one of three months on each charge. I do not accept Mr Fairclough's submission that there should be no further disqualification, for the appellant ought not to have driven at all, and that must be made clear to him. However I agree that fines totalling $500 are excessive in the circumstances, and in each case the fine is reduced from $250 to $100.

Solicitors:

Cavell Leitch Pringle & Boyle, CHRISTCHURCH, for Appellant
Crown Solicitor, CHRISTCHURCH, for Respondent.

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