

BETWEEN

COLIN ARTHUR SCOTT LIND

Appellant

AND

JOHN BARRY VILIUA

Respondent

*copy
Munster
D.L.C.*

Hearing: 17 May 1985

Counsel: D.P.H. Jones for Appellant
E.F. Puni for Respondent

Judgment: 28 May, 1985

UNIVERSITY OF Otago
14 AUG 1985
LAW LIB

JUDGMENT OF CASEY J.

The Respondent faced a breath alcohol charge in the District Court at Dunedin on 8th November 1984. The Judge found the charge proved, but accepted that in view of the "disasterous consequences" of a conviction upon him and his family, he would take the extremely exceptional step of discharging without conviction under section 42 of the Criminal Justice Act. The prosecutor appeals by way of case stated, the question being whether, having regard to the provisions of section 30(3) of the Transport Act 1962, the Court had jurisdiction to discharge the respondent without conviction pursuant to the provisions of section 42. Subsection 1 of the latter reads:-

"Power of Court to discharge offender without conviction or sentence - (1)
Where any person is accused of any offence, any [District Court], after inquiry into the circumstances of the case, may in its discretion discharge

that person without convicting him, unless by any enactment applicable to the offence a minimum penalty is expressly provided for."


Section 30(3)(d) of the Transport Act 1962 provides that every person who commits an offence against section 58 (which relates to driving with excess of breath or blood alcohol levels) is liable to imprisonment or a fine "and, (without prejudice to the power of the Court to order a longer period of disqualification) the Court shall order him to be disqualified from holding or obtaining a drivers licence for a period of 6 months, unless the Court for special reasons relating to the offence thinks fit to order otherwise."

For the appellant Mr Jones submitted that the mandatory disqualification for 6 months constitutes express provision of a minimum penalty. On the other hand Mr Puni sought to persuade me that the proviso to section 30(3), giving the Court the ability to order otherwise than mandatory disqualification, removed the latter from the status of a minimum penalty.

I was referred to a number of unreported decisions, some of which dealt exclusively with the special reasons relating to the offence mentioned in section 30(3)(d) of the Transport Act 1962. The Judge made no mention of these in his decision and respondent's counsel concedes that there were none. I reserved my judgment in order to study these cases more closely, but they only confirm me in the view I reached at the hearing, that the appeal must be allowed. I refer particularly to the judgment of Barker J. in MOT v Wimutu (Auckland M 10/83: 19 May 1983) and agree with his comment on page 4, that "unless and until the District Court Judge states that there are 'special reasons relating to the offence', then the requirement of disqualification of driving for six months is a

minimum penalty."

The appeal is allowed and the question in the case is answered "No". The matter will have to be remitted back to the District Court to impose a penalty in the light of this judgment. I might add the circumstances disclosed in the evidence fully supported the Judge's discretion to discharge under section 42, had he been legally able to do so. It would appear that he was relieving at Dunedin and there may well be practical difficulties in having the case brought before him again. There should be no problem in any other Judge dealing with the question of penalty, if this can be arranged, as I imagine the respondent wants the matter dealt with as quickly as possible. There will be no order for costs.



Solicitors: Crown Counsel for Appellant
Benson, Cruickshank & Co. for Respondent