

(3)

NOT  
RECOMMENDED

BETWEEN

HUGHES

Appellant

AND

MINISTRY OF TRANSPORT

Respondent

1039

Hearing: 31 July 1986  
Counsel: M. Dunning for Appellant  
R.J. Earwaker for Respondent  
Judgment: 31 July 1986

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(ORAL) JUDGMENT OF BARKER J

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This is an appeal against sentence. The appellant pleaded guilty in the District Court at Papakura on 12 May 1986 to two charges - one of dangerous driving causing bodily injury, and the other of driving with excess blood alcohol.

On 23 May 1986, after the District Court Judge had considered a probation report, the appellant was sentenced on the dangerous driving causing injury charge to 8 months' Periodic Detention and was disqualified from driving for one year. On the excess blood alcohol charge, he was fined \$300 and disqualified from driving for one year, the terms of disqualification to be concurrent.

The thrust of the appeal is against the length of the Periodic Detention sentence. The offences took place on 13 December 1985. The appellant, who runs a business virtually on his own, was driving home from work after what he characterised as 'a difficult day'. He admitted to consuming alcohol. His wife was unable to drive him because she was in labour.

The appellant struck a power pole; the vehicle continued across the verge of the street into a property where some children were playing. Two of the children were either struck by the car or by debris. The appellant then collided with a transformer. After the accident, he acted responsibly and admitted his involvement.

The District Court Judge, in imposing sentence, characterised the offence of dangerous driving 'as serious as one would expect to encounter'.

With respect to the District Court Judge, one has seen and can think of objectively more culpable offences; nevertheless, this was a serious offence as is shown by the charge of 'dangerous' as distinct from 'careless' driving. The tragedy was that two small children, playing in what should have been the security of the home of one of them, were injured.

The District Court Judge had before him a probation report which spoke glowingly of the appellant. He is aged 31; he is married with 3 young children. He has been managing director of his own firm which involves him in working many hours a week. This was his first offence of any kind. There is no evidence of any alcohol problem; the Probation Officer stated, and it was accepted by the District Court Judge, that the appellant is unlikely to offend in the future. Clearly, he was remorseful about this present occurrence.

Despite the fact that the appellant was a first offender, the District Court Judge commenced his remarks by contemplating whether he should impose a sentence of imprisonment. He decided not to do so for what seem to me valid reasons that related to the provisions of the Criminal Justice Act 1985, and the effect on the appellant's family. He also held that there was not likely to be any repetition of this type of offending.

Counsel for the appellant has filed affidavits which articulate the great stress on the family of the appellant that has been caused by the total sentence of the Court. His inability to drive has cast some strain on his wife and has made the running of his company very difficult - so much so that Mr Dunning advised me that a receiver was appointed this morning.

The day on which the appellant has to report to the Periodic Detention Centre, namely Saturday, is the only day he would normally have spent with his children. His wife has to transport him to the Periodic Detention Centre and she is never sure as to what time he is going to be released. Therefore, much of her Saturday is spent in the car with the children. A medical certificate has been supplied which shows that the wife is suffering from stress which can be directly attributed to the difficult family situation. The house is now on the market; it may be that the appellant will have to give up his employment and revert to a less well-paid position as a health inspector for which he is qualified. He will probably need to go out of Auckland to obtain suitable employment in that sphere.

The District Court Judge did pay some heed to the effect on the family of the sentence of Periodic Detention. However, to my mind, he paid insufficient regard to it. Also, he did not pay regard at all to the fact that this man has had to pay \$15,000 for the car which was a 'write-off' as a result of the accident and for which there could be no insurance because of his drunken driving; he has also paid \$2,000 to the Power Board for the power pole damaged by his dangerous driving.

It seems to me that, although the offending was bad, the totality of the sentence and the monetary consequences of offending has borne oppressively on this appellant who is very unlikely to offend again. As I say, there can be no

challenge to the length of disqualification. Mr Dunning considers that it is impossible to obtain a limited licence for this man because of the inability to define with any precision the times when and places where he may drive. Therefore, he will be effectively unable to drive, even for the purposes of business, unless he obtains a more structured position such as that of a health inspector.

The appellant has served 2 months at the Periodic Detention Centre; I think the ends of justice would be achieved if the overall sentence of 8 months' Periodic Detention were reduced to 4 months' Periodic Detention. This will mean that he will in effect have to serve only another 2 months' at the Periodic Detention Centre.

He is therefore required to attend at the Periodic Detention Centre at <sup>Papakura</sup> Manurewa at 6 p.m. tomorrow, 1 August 1986; he is to attend at such time as the Warden may direct and as may be specified in a notice that he is to receive before he leaves the Court. I certify a maximum period of attendance of 9 hours on any one occasion. He is to serve only two further months.

There is no complaint about the fine in respect of the blood alcohol matter which must stand. The sentence in respect of the charge of dangerous driving causing bodily injury is varied as indicated; the appeal is allowed to the extent indicated.

*R. D. Barker J.*

SOLICITORS:

Wilson Henry, Auckland, for Appellant.  
Crown Solicitor, Auckland, for Respondent.