IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

1824

M 614/86

BETWEEN THOMAS MALCOLM EYNON

Appellant

A N D MINISTRY OF TRANSPORT and THE POLICE

Respondent

Hearing: 3 December 1986

Counsel: I Hay for appellant
M A O'Donoghue for respondent

Judgment: 3 December 1986

ORAL JUDGMENT OF EICHELBAUM J

The appellant appeals against sentence in respect of 18 months imprisonment imposed for conversion, and 12 months imprisonment for disqualified driving. Although those are the only sentences against which the appeal has been brought, it is relevant to mention that on the same occasion the appellant was dealt with on eight other charges; breach of periodic detention, theft, an earlier occasion of disqualified driving, a charge of excess breath alcohol, unlawfully getting into a motor vehicle, another excess breath alcohol charge, dangerous driving and failing to give name and address. I add that I do not have any comprehensive list but as near as I can make out those are the matters for which the appellant was dealt with on this occasion, and they appear to cover five distinct episodes.

All this is relevant because of course the Judge not only had to fix a sentence in respect of the two charges with which the appeal is concerned, but to impose a sentence appropriate to the totality of the offending. And similarly on appeal the question I have to ask is whether the effective total sentence is excessive, having regard to the totality of the offending, by which I mean the whole 10 charges and not merely the 2 now before me, directly involved in the appeal. When I say excessive, of course that means in the sense in which that term is used in relation to appeals against sentence.

Counsel has made some attempt to argue that in principle the nature of the sentence, that is one of imprisonment, was inappropriate, basing his argument mainly on S 6 of the Criminal Justice Act 1985; but with all respect, having regard to the nature and totality of the offending, and the failure of the appellant to respond to more lenient sentences in the past when before the Court on similar offences, such argument is quite hopeless. It is clear that drink is at the root of the appellant's trouble. It is said that he recognises that and is now in the right frame of mind to undergo treatment. One can only commend and encourage that attitude because obviously if the defendant does not do something about his drinking problem then he will continue to add to the formidable list which he has accumulated at the age of 21. When one looks at aspects of that list particularly relevant to the matters on which he is now before the Court, one sees that there are, by my count, 8 previous convictions on charges of conversion or unlawfully getting into a motor vehicle in respect of which the defendant has come before the Court more or less at annual intervals since 1981. He has previously been sentenced to eight months imprisonment on such a charge. So far as driving offences are concerned, the defendant has accumulated a massive list under that heading also, and has at least 4 previous convictions for disqualified driving, the greatest penalty imposed so far being 6 months imprisonment. In 1984 he was made subject to a S 30A order but clearly has continued to drive and thereby flout the order of the Court.

Against all this background, while the appellant's desire to give attention to his rehabilitation is commendable, from a sentencing point of view that consideration must be regarded as outweighed by the totality of the offending and the need to protect the community. Having regard to those aspects, the regularity and seemingly incorrigible nature of the offending, and in particular the atrocious piece of driving which brought the appellant before the Court in respect of the September 1986 episode, one can fully understand the desire of the District Court Judge to throw the book at the appellant. Nevertheless, while a significant sentence of imprisonment was entirely appropriate, I have been brought to the conclusion that an effective term of 18 months has to be described as manifestly excessive. It is desirable that when due regard has been given to the needs of punishment and of protection of the community, that the appellant should be in a position to undergo treatment as soon as possible and it is less likely that any such treatment will be effective while the apellant is in prison. Accordingly so far as the sentence of 18 months imprisonment on the charge of conversion is concerned, that is quashed and in lieu I substitute a sentence of 12 months imprisonment. In all other respects the sentences imposed stand.

Solicitors for Appellant: Goddard Oakley Carter & Moran, Wellington

Crown Solicitor, Wellington