

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

A.P. No.39/87

BETWEEN

HESELWOOD

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

NOT
RECOMMENDED

Hearing: 2 April 1987

Counsel: Miss I. Mitchell for Appellant
D.J. Saunders for Respondent

Judgment: 2 April 1987

ORAL JUDGMENT OF TIPPING, J.

This is an appeal by Heselwood against a term of disqualification from driving imposed by the District Court at Christchurch.

The appellant was convicted on a breath alcohol charge, sentenced to three months periodic detention and disqualified from driving for twelve months.

There is no appeal against the sentence of three months periodic detention. The appellant however submits through Miss Mitchell, who presented his submissions, that the twelve months disqualification was clearly excessive.

In support of that submission Miss Mitchell pointed out that the appellant had been to a party the night before and was found the following morning in Moorhouse Avenue driving his motorcycle at about 100 kms an hour. He was then tested and the level was 700mg, which is over the limit but not

grossly so. It was pointed out that the appellant had endeavoured to be responsible, had stayed overnight at the place where the party had been held but obviously his judgment was not as good as he would have liked in that he was still over the legal limit.

The appellant has one previous conviction of a like nature in August 1980 when he was fined the comparatively small sum of \$50.00 and disqualified from driving for one year.

The learned Judge who imposed the term of twelve months disqualification did not have a stenographer in Court when the sentence was imposed and therefore his comments and reasons are not immediately apparent to the Court.

Mr Saunders for the Crown pointed out that this was a second offence and there had been a substantially higher speed than was lawful, albeit that this was Moorhouse Avenue.

The appellant received what could be thought to be a fairly substantial penalty of three months periodic detention for this offence and I think that is relevant to a degree when one is considering the question of the period of disqualification.

There was no accident and no other manifestation of bad driving, so it would appear, other than simply the speed, which was certainly too high.

In all the circumstances I consider that this period of disqualification was longer than should have

been imposed and thus clearly excessive.

I quash the twelve months disqualification
and substitute a period of nine months.

Alfred J. [Signature]