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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

AP.166/88

NOT RECOMMENDED

BETWEEN DARRIN EDWARDS

Appellant

AND MINISTRY OF TRANSPORT

Respondent

Hearing: 7 November 1988

Counsel: B. Smith for the Appellant
C.Q.M. Almao for the Respondent

Judgment: 7 November 1988

ORAL JUDGMENT OF DOOGUE J

This is an appeal against sentence.

The Appellant was convicted and sentenced on 19 October 1988 to one months imprisonment, together with a disqualification from holding or obtaining a motor drivers licence for twelve months in respect of a breath alcohol offence, the Appellant having a breath alcohol level of 650 micrograms of alcohol per litre of breath of 23 July 1988.

The Appellant was at the time of the offence disqualified from holding or obtaining a drivers licence and the same penalty was imposed in respect of the offence of driving whilst disqualified.

The onus is on the Appellant to satisfy the Court that the sentence imposed is manifestly excessive or wrong in principle or that there are exceptional circumstances calling for its revision.

It is urged upon me on behalf of the Appellant that the District Court Judge gave insufficient attention to the possiblity of a non-custodial penalty such as periodic detention or community service. It was submitted that in this case no issue of dangerous driving arose and that the appropriate penalty was a non custodial penalty having regard to the background of the Appellant when on all previous occasions he had come before the Court he had been dealt with by way of fine and not by way of non custodial penalties. It was submitted that the short period of custodial sentence imposed showed that the safety of the community was not really in issue for the purposes of Section 7 of the Criminal Justice Act 1985 and that as bail had been granted to the Appellant to enable the present appeal to be pursued, that again showed that the Appellant was no great risk to the community.

The Appellant has been before the Courts on a number of occasions. In so far as his record is relevant to the present appeal, it discloses that he was dealt with in 1985 for driving whilst disqualified, and in 1988 on 6 July 1988 he came before the Court as an unlicensed person driving with excess breath alcohol and on that occasion he was fined and disqualified from driving for six months.

The District Court Judge in imposing sentence stated that he was of the view that the Appellant knew what he was doing on this occasion, that the Appellant had had it brought home to him only a matter of two weeks before that the Appellant was not to drive after he had been drinking and that he just thumbed his nose at the Courts and the community and determined to drink and drive again. Thus the District Court Judge put at the forefront of his sentencing remarks the fact that this was a deliberate breach of the law when the Appellant had recently been before the Courts in respect of a similar offence.

The Appellant indicated to the District Court Judge that he did not even know what he was doing at the time. The District Court Judge took the view that if that was the case he simply should not be drinking and certainly not drinking and driving, as the District Court Judge stated that it was not:-

> "... going to be any consolation to anyone who loses his life when you have an accident in a drunken state controlling the motor vehicle."

The District Court Judge referred to the pre sentence report. The pre sentence report stated inter alia:-

> "Edwards presented at interview as a rather easygoing individual who appears to have been little affected by previous Court sanctions. The process of gaining a driving licence is somewhat daunting to Edwards. This perception of the test along with a compulsion to drive, seemingly without regard to consequences, may be reason enough for him to reoffend.
>
> If the Court is considering anything short of full-time custody then this Service would recommend a sentence of periodic detention which may serve as a deterrent to future offending.
>
> Supervision for Edwards is not recommended as he does not admit an alcohol problem and appears unwilling to address the issue."

The District Court Judge took the view that it was his responsibility to endeavour to ensure that the Appellant did not reoffend. He took the view that the only way that he could see to do that was to sentence the Appellant heavily, and that, accordingly, he imposed a short custodial sentence plus the period of disqualification already referred to.

Mr Almao on behalf of the Respondent stressed the matters already traversed by me and the age of the Appellant at 22 and he stressed that Section 7 of the Criminal Justice Act 1985 required the District Court Judge to take into account in

imposing sentence to have regard to the desirability of keeping offenders in the community:-

> "... so far as that is practicable and consonant with promoting the safety of the community."

Mr Almao submitted that in this case the District Court Judge was fully justified in imposing the present sentence to ensure that there was a true deterrent imposed upon the particular Appellant.

The issue for me is not the appropriateness or otherwise of the particular sentence imposed unless it is wrong in principle or manifestly excessive or that there are exceptional circumstances that entitle me to reconsider it. There is no suggestion of any exceptional circumstances, although the circumstances of the individual Appellant were put before me. There is no suggestion that the sentence imposed is manifestly excessive. There is basically a submission that the sentence imposed was inappropriate in so far as it is imposing a custodial sentence when a non custodial sentence could have been imposed with the same effect. Accordingly I must infer that the submission is being made that the sentence is wrong in principle..

It may be that if I were the sentencing Judge I would have imposed a non custodial sentence. However, it is understandable that the District Court Judge should take the

view that a non custodial sentence was inappropriate when the Appellant was not prepared to recognise that he had an alcohol problem which could have been better addressed in terms of a non custodial sentence. I therefore take from the District Court Judge's sentencing remarks that he took the view that the only way of bringing home to the Appellant the seriousness of his offending was to impose a short term of imprisonment as any other sentence would leave the Appellant with the same impression as he has apparently had to date that he can continue to offend and will be dealt with in a purely formal way by the Courts.

I am quite unable to say in the particular circumstances that the sentence imposed is wrong in principle. The offence of the Appellant was an offence which clearly involves the safety of the community. It was entirely appropriate that in those circumstances the District Court Judge should consider a short custodial sentence more likely to have a deterrent effect upon the Appellant than a non custodial sentence, having regard to the Appellant's background.

I cannot therefore find that the sentence imposed was either manifestly excessive or wrong in principle or that there are exceptional circumstances calling for its revision.

The appeal must be dismissed.

Solicitors for the Appellant:	Stace Hammond Grace & Partners Hamilton
Solicitors for the Respondent:	Crown Solicitor Hamilton