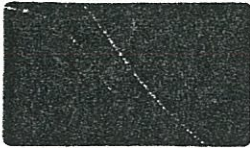


1/3/88  
Eskdale v MOT

IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY

AP.14/88



Set 2

BETWEEN GRAHAM BLAKE ESKDALE ✓

Appellant

AND

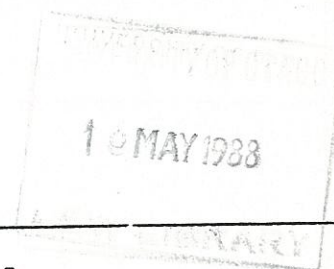
TRANSPORT  
MINISTRY OF WORKS

Respondent

Hearing: 1 March 1988

Counsel: H.H. Roose for the Appellant  
R.G. Douch for the Respondent

Judgment: 1 March 1988



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ORAL JUDGMENT OF DOOGUE J

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This is an appeal against sentence, the Appellant having been sentenced on 20 March 1987 to a fine of \$100.00 with costs of \$55.00 and disqualified from holding or obtaining a drivers licence for a period of three months in respect of the offence of failing to give information leading to the identification of the driver of a vehicle pursuant to Section 68B(1) and (3) of the Transport Act 1962.

Mr Roose for the Appellant seeks to persuade the Court that the sentence of disqualification is wrong in

principle on the basis that the offence of failing to give information leading to the identification of the driver was not an offence within the provisions of Section 30(4) of the Transport Act 1962, and, alternatively, that the circumstances of the offence did not call for a disqualification and that the sentence imposed was excessive.

So far as the first point is concerned, Mr Roose submitted that having regard to the case law on the topic, there had to be a clear nexus between the misdemeanour complained of and road safety, and his submission was that that did not occur in the present case.

The facts of the case are short. The vehicle involved was stopped at a checkpoint. When a Traffic Officer began walking towards the vehicle the driver got out of the vehicle and ran down the street. Although the driver was pursued, he was not found. There were two male passengers in the car who were asked to give information as to the identity and address of the driver of the vehicle. The Appellant stated that his mother owned the car. He was asked several times to identify the driver but remained silent. He was then arrested for failing to supply details of the driver. At the Police Station he became co-operative and gave the driver's name but said that he did not know the address. He stated also that the driver was driving because the Appellant had consumed too much

alcohol to drive himself but added that the driver was himself under the influence of alcohol.

Mr Roose drew my attention to the relevant case law on the topic, including the decision of the Court of Appeal in Husband v Napier City Council, [1979] 1 NZLR 317, 319 (line 19 ff), and also to the decision referred to therein of Police v Dixon, [1973] 2 NZLR 225, 229. He further referred me to an earlier decision of this Court in Willis v MacLennan, [1952] NZLR 436, 437 (line 25 ff) where the then Chief Justice held that in the normal course the disqualification of a driver should only arise where the offence has to do with the driving of a motor vehicle and not where the offence has nothing to do with such an act. Whilst that case has not been referred to in the subsequent cases referred to by Mr Roose or to the cases referred to therein, it would appear that it was inconsistent with the more recent decisions and, in particular, the decision of the Court of Appeal in Husband's case, supra. Without any disrespect to Mr Roose's argument, I do not intend to set out all the portions of the judgment in Husband's case, supra, and Dixon's case, supra, referred to by counsel before me.

The issue is whether or not, on the facts of the particular case, the offence relates to road safety for the purposes of Section 30(4) of the Transport Act 1962. In Husband's case, Supra, the Court of Appeal accepted there was

middle ground in what constituted the boundaries relating to road safety. The Court appeared to approve the decisions in Dixon's case, supra, and the case of Williams, referred to therein.

Dixon's case, supra, has some similarity to the present case. In that case the Appellant was a passenger in a vehicle which rolled off a road and was smashed. The Appellant informed the Police at the time that he was the driver of the vehicle but the next day retracted that and stated that he wasn't. He was disqualified from driving for failing to comply with a direction given to him by a Constable to supply information. (Husband's case, supra, did not relate to the giving of information but to the refusal to accompany an officer to the Police Station so that it is a slightly different type of case.) Mr Roose referred to the fact that in Dixon's case, supra, there was an accident and injury to the person whereas in the instant case there was no accident or injury to the person. For myself I fail to see where the distinction arises.


In Dixon's case the offence was held to be one relevant to road safety because of the failure to give proper information about the driver of the vehicle. The present case is an identical case in that respect. The question of whether or not there has been an accident or injury to the person would

appear to be entirely irrelevant in relation to the issue. In the present case a check of drivers was being carried out in relation to the pursuit of road safety in respect of the apprehension of drivers who might be under the influence of alcohol. The Appellant, by failing to make known the identity of the driver, failed to enable the enforcement officers to take steps to ensure that the driver was apprehended. This apprehension appears to me to have related directly to road safety at that time. It also relates to the wider issue of road safety. I can see no distinguishing features between the present case and Dixon's case, supra, even although the facts are slightly different. Accordingly, so far as the issue of principle is concerned, I must find against Mr Roose.

Mr Roose advanced his submissions in respect of whether the circumstances call for disqualification to no great extent. He submitted that the arrest itself was a penalty in the present case. However, the arrest appears to have been but for a brief time and enabled the Appellant to give the information and, on the face of it, avoid a more serious penalty than that imposed upon him. In my view it could not be said that the three month period of disqualification imposed was manifestly excessive having regard to the circumstances, but that the District Court Judge did indeed temper the sentence in relation to the circumstances of the matter.

In my view of the matter, whilst the relationship between the offence and the issue of road safety may not be a relationship between a driving offence and road safety as was discussed in Willis's case, supra, it comes within the broad middle ground discussed in Husband's case, supra, and exemplified in Dixon's case and the appeal must be dismissed for the reasons given, both in respect of the matter of principle raised and on the issue of whether the sentence imposed was excessive.

The disqualification has been suspended until tomorrow. That suspension shall hold good so that the first day of the disqualification shall be 2 March 1988.



Solicitors for the Appellant:

Boot & Roose  
Hamilton

Solicitors for the Respondent:

Crown Solicitor  
Hamilton