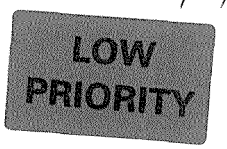
6/9 NZLR

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

1097



AP.175/89

BETWEEN PETER GEORGE HEWGILL
of Auckland,
Electronics Engineer

Appellant

A N D AUCKLAND CITY COUNCIL

Respondent

Appeal Hearing: 8 August 1989

Judgment: 10 August 1989

Counsel: M G P Knapp for appellant
Mrs Pauline Barrett for respondent

JUDGMENT OF HENRY, J.

This is an appeal against a sentence of two months imprisonment imposed in the District Court at Auckland on 25 July 1989 on a charge of causing bodily injury by driving in a dangerous manner. The brief facts are that at about 8:15 p.m. on 7 October 1988 Appellant was driving a motor car on Jervois Road in Auckland at a speed estimated at 80 kph, being the outside of two vehicles which had given an impression they were in some way racing each other. Appellant's contention was that he was endeavouring to overtake the second vehicle which had alternatively been speeding up and slowing down. Appellant was observed to turn into West End Road, and still at speed drove down that road, crossing to the incorrect side temporarily as he took a right hand bend. After negotiating two bends further down and while on

a comparatively straight stretch of road but still travelling at about 80 kph he noticed a stationary traffic patrol vehicle, braked heavily, with the result his vehicle veered to the incorrect side of the road and struck a motor cycle being ridden by a traffic officer approaching from the opposite direction. The rider suffered a severe leg injury, both major bones being broken in nine places. He is still in the process of recovering from his injuries.

On later examination Appellant's vehicle was found to have a damaged rear brake which combined with locking up of the front brakes which occurred when Appellant applied the brakes may have caused or contributed to the vehicle veering to its right.

Appellant is 32 years of age, has no previous convictions and is of previous unblemished character. Several laudatory references were produced to the Court which confirm his general good character and responsibility. In passing sentence the District Court Judge adverted to Appellant's previous good character but referred to the facts of the offending, particularly the duration of the episode, and imposed the sentence of imprisonment.

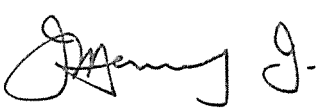
Mr Knapp submitted that the Judge had given insufficient weight to Appellant's previous good record (including 16 years as a driver) and had overlooked the

need to consider alternative sentencing options. He also stressed the fact that no alcohol was involved, that this was but one bad error of judgment, and that the accident had been contributed to by the braking defect referred to. As against that, Mrs Barrett referred to the dangerous nature of the manoeuvres undertaken by Appellant in a busy suburban area, with the serious consequences which followed. Counsel were unable to refer me to sentences imposed for similar offences recently in the Auckland area, although reference was made to those relating to charges of careless driving causing death and dangerous driving causing death respectively.

As in all such matters, determination of the appropriate sentence is essentially a balancing exercise. Looked at overall, I am persuaded in this particular case that imprisonment was inappropriate, for the following primary reasons. First, the nature of the driving, although reprehensible and indefensible, was towards the lower end of the scale of what can be classed as dangerous driving. The overtaking had been completed and Appellant while travelling at an excessive speed and having earlier been on the incorrect side of the road had resumed his correct side when he braked and lost control, partially due to an existing defect later ascertained. Second, his good record and character, including previous clear driving experience, is to be given full weight.

Third, there is an alternative option available in the nature of periodic detention, which is in itself a punishment of some severity to a person such as the Appellant and which also allows the provisions of s.7 (1) of the Criminal Justice Act 1975 to be given full effect.

The appeal is therefore allowed, the sentence of imprisonment quashed and in lieu thereof Appellant is sentenced to periodic detention. I take into account he has remained in custody since 28 July, bail for reasons not disclosed on the papers having been declined by the District Court following the filing of the appeal. Accordingly, the sentence will be for a period of four months. He is to report for the first time to the centre at Auckland on Friday 18 August 1989 at 6:00 p.m. and thereafter on such occasions as the warden specifies, attendance on any one occasion not to exceed nine hours. In addition, the appellant will also be fined the sum of $1000.00, one-half of which is awarded to Kevin John SHIRTLIFF pursuant to s.28 (1) of the Criminal Justice Act 1985.



Solicitors:

Johnston Prichard & Fee, Auckland, for appellant
Simpson Grierson Butler White, Auckland, for respondent