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IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

AP.51/89

NOT
RECOMMENDED

1404

BETWEEN PAUL WARREN HIGHSTED
Appellant
A N D P O L I C E
Respondent

Hearing: 22 September 1989

Counsel: B A Wall for Appellant
 J N P Young for Respondent

ORAL JUDGMENT OF FRASER, J.

This is an appeal against an effective sentence of nine months imprisonment. That term was imposed on a charge of disqualified driving and concurrent with it were terms of three months on excess breath alcohol, three months on assaulting a police officer and one month on resisting arrest. In addition to the terms of imprisonment, the appellant was disqualified and he was convicted and discharged on a careless use charge. He has seven previous convictions for driving while disqualified between 1983 and 1988 in respect of which he was sentenced to various penalties including imprisonment. he has four previous convictions for alcohol impaired driving and again he has been sentenced in various ways including imprisonment. He has other convictions such as disorderly behaviour, resisting arrest and breach of periodic detention which are relevant as part of his background.

The circumstances of this offending as set out in the summary of facts presented to the District Court are that at 9pm on 17 July 1989 the police and Ministry of

Transport officers attended a motor accident in Invercargill. The appellant had been the driver of one of those vehicles. It collided with the back of a parked vehicle. The appellant was intoxicated and aggressive. He was, and acknowledged he was, a disqualified driver. When arrested he became violent. A struggle ensued. An evidential breath test was administered and following that the appellant again became violent and abusive, lashing out with fists and feet.

The maximum penalty for disqualified driving if an offender is convicted on indictment, is five years imprisonment. Orders disqualifying drivers form an important part of the system of justice both as a penalty and as a means of keeping drivers who might be a danger to the public off the roads.

It is submitted for the appellant that the sentence of imprisonment was inappropriate. He should instead have been sentenced to supervision with conditions as to treatment for his alcohol problem, or alternatively if imprisonment was appropriate, then the term imposed was excessive and counsel cited to me several individual cases of sentences imposed in other Courts.

It is relevant in this case that this appellant has persistently and blatantly defied the Court's orders by driving when he has been disqualified from doing so, and on some occasions including this occasion, his driving occurred whilst his faculties were impaired by alcohol and the incident was accompanied here with circumstances of violence and aggression.

The possibility of supervision as an alternative sentence was expressly considered by the sentencing Judge who

noted that on a previous occasion the appellant had been on a community care programme and in addition to that he obviously did not accept that the appellant's motivation in the present instance was genuine.

I do not consider that the sentence was inappropriate having regard to the circumstances and background of this offender. I consider that the Judge was quite entitled to determine that imprisonment was the appropriate penalty. I decline to infer from the few cases submitted to me any particular pattern of sentencing in cases of this sort. Certainly they were cases where persons were being sentenced for disqualified driving and they had previous convictions, and in some cases the sentences imposed were less than that imposed here, but the sentencing Judge in this case was dealing with a particular combination of circumstances and when one has regard to that and to this man's background, I consider that nine months imprisonment was not in any way excessive. It is my view that imprisonment was appropriate and the term was within the range available to the sentencing Judge.

The appeal is dismissed.



Solicitors:

Macalister Bros, Invercargill, for Appellant
Crown Solicitor, Invercargill, for Respondent