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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

A.P. No.169/89

1628

NOT
RECOMMENDED

BETWEEN

H [REDACTED]

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 25 October 1989
Counsel: Appellant in person
M.N. Zarifeh for Respondent
Judgment: 25 October 1989

ORAL JUDGMENT OF TIPPING, J.

This is an appeal by [REDACTED]
H [REDACTED] against both conviction and sentence on a charge of refusing to give a blood specimen when required to do so by a law enforcement officer. Mrs H [REDACTED] has appeared in person and has presented to the Court detailed written submissions and also has supplemented them orally.

I have read the file very carefully and in particular the written material and I have also had a discussion with Mrs H [REDACTED] as to the circumstances and I have explained to her that whatever sympathy the Court might have for people who have a fear of needles, the law as laid down by Parliament must be observed and I am bound by it and to apply it in the same way as all citizens are. In short Mrs H [REDACTED] acknowledges that when asked for a

blood specimen she declined to give it. Clearly then an offence has on the face of it had been committed because there was obviously a lawful request and there has been a refusal.

Mrs I has indicated and this is the same as her case in the Court below, that the reason for her refusal was her concern over needles and a concern as to her health generally. No medical evidence was called in the Court below but in support of her submissions to me Mrs H has presented a certificate from a Dr O'Brien which mentions a health condition from which she suffers and says she is on treatment for it. Parliament has laid down in this sort of case that it is a defence if the Court is satisfied on the evidence of a registered medical practitioner that the taking of a blood specimen from the defendant would have been prejudicial to the defendant's health. There was no such evidence in the Court below and even admitting for the purpose of this appeal the medical certificate, the medical certificate does not make any reference to the statutory criterion either.

An offence having clearly been committed by the refusal and there being no evidence in support of the statutory defence, the learned Judge in the Court below had no alternative in my view but to enter a conviction. The position is in essence the same before me. While having some sympathy for the Appellant on the assumption that she has this health condition and this concern about needles the law is quite clear. The statutory defence has not been established and therefore there is no

justification for me to allow the appeal against conviction and it is accordingly dismissed.

There is also an appeal against sentence. The Appellant was disqualified for six months and fined \$300.00. As these cases go this was a light sentence, although I accept that Mrs H thinks it was a heavy sentence largely on the premise that she does not think she has committed an offence. This Court can only intervene if a sentence is clearly excessive or inappropriate. There is obviously nothing inappropriate in a disqualification and a fine in this context and I simply cannot come to the view on the relevant principles that either branch of the penalty was clearly excessive and the appeal against sentence must also be dismissed.

