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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. AP128/89

BETWEEN GORDON WILLIAM
ALEXANDER EAGLE

Appellant

**NOT
RECOMMENDED**

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A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 24 August 1989

Counsel: P. Egden for Appellant
R.E. Neave for Respondent

Judgment: 24 August 1989

ORAL JUDGMENT OF HOLLAND, J.

The appellant appeared in the District Court at Christchurch on 20 July on a charge of driving a motor vehicle while the proportion of alcohol in his breath exceeded the prescribed limit of 400 microgrammes. In fact the statement of facts showed that the level of alcohol in his breath was 974 microgrammes. He was a first offender, 40 years of age and a professional driver. He was obviously not in a strong financial position and did not appear to have any liquid assets. He was separated, but apparently had no obligations in that regard. He received a net weekly wage of \$280 from which he was required to pay rent of \$100 and hire purchase of \$30. Nevertheless, as a result of the accident, the damage to his car was going to cost him something in the vicinity of \$500 and he faced a claim of a

further \$2,000 for damage to the other vehicle. In the circumstances the District Court Judge imposed a sentence of periodic detention for three months and disqualified the appellant from driving for 15 months.

I am satisfied that this sentence was out of line with the norm for a first offender, notwithstanding the relatively high level of alcohol, and notwithstanding that there was an accident causing property damage. It was caused to a vehicle which was unoccupied and hence did not cause a risk of personal injury to third parties.

The appellant, at the age of 40, is a professional driver of over 20 years who was entitled to some credit for his good driving record. I am satisfied that in the circumstances the District Court Judge, in order to be in conformity with sentences on other offenders in the District Court in Christchurch, should have imposed a fine, notwithstanding the appellant's financial difficulties. I am also satisfied that the 15 months' period of disqualification was too great.

The appeal will be allowed. The sentence of periodic detention will be quashed. In lieu thereof the appellant will be sentenced to a fine of \$1,000, together with Court costs in the District Court of \$65, and that sum is to be paid by instalments of no less than \$50 per week. His period of disqualification is to be a period of nine months from the date of the imposition of the original sentence.

AD Howard