

19/7

NZLR

NOT
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP12/89

680

BETWEEN

EDWARDS

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 10 July 1989
Counsel: Appellant in Person
Anna Tutton for the Respondent
Judgment: 10 July 1989

JUDGMENT OF ELLIS J

Mr Edwards now applies for leave to appeal against my decision, to the Court of Appeal. In essence, I found on the evidence that stopping in the right hand lane of the motorway was in breach of Mr Edward's duty of care and accordingly the conviction for careless use was justified. As will appear from the judgment, I also formed the view that the facts of the matter were verging on the trivial and would warrant a consideration of a discharge under s.19, and that I was prepared to consider such a discharge on knowing Mr Edwards previous history. I accordingly asked for a memorandum from Mr Burston, which he duly filed and this showed a conviction for speeding at Lower Hutt, the offence date being 27 October 1987, the conviction date 2 December 1987, the Lower Hutt record number 7032010891 and the fine \$30.

I was aware that there may be some question relating to that conviction, but the memorandum itself had been endorsed by Mr Edwards to the effect that he did not wish to submit a memorandum in this matter "at this time". I therefore proceeded on the basis that Mr Edwards had a previous conviction and therefore considered that there was no ground upon which I should interfere with the simple conviction and discharge entered by the Justices. Mr Edwards now submits in a full memorandum that there are points of law involved of such an importance that warrant the matter going before the Court of Appeal. I am afraid that I do not agree that this is so and therefore I must refuse the application.

However, in hearing the submissions, it appears that Mr Edwards faced two charges in the Lower Hutt Court at the end of 1987, the first being that he failed to give his name and address when required and the second being a speeding charge. He tells me now that he was acquitted on the speeding charge, but convicted of the refusal to give his name and address, and that that particular matter is now before the Court of Appeal. Miss Tutton says that her enquiries show that there may be three matters before the Court of Appeal at present involving Mr Edwards. It seems to me that there is merit in clearing the matter up and Miss Tutton agrees to make appropriate investigations so that the exact position can be clarified. If I proceeded on a mistake in dealing with the conviction against sentence, then there may well be ways to rectify that.

I therefore ask Miss Tutton to file a further memorandum covering the uncertainties I have referred to and I hope that in this case Mr Edwards will find his way clear to read the memorandum and let the Court know if he accepts what it reveals.

A. D. E. J.
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Solicitor:

Crown Law Office, Wellington.