IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

AP.67/90

BETWEEN FRASER

Appellant

AND POLICE

Respondent

Hearing and Judgment: 6 June 1990

Counsel: R.A. Craven for the Appellant
C.Q.M. Almao for the Respondent

JUDGMENT OF DOOGUE J

This is an appeal against sentence.

The Appellant was sentenced on 17 October 1989 to three months periodic detention, along with a disqualification in respect of driving for a period of six months in respect of an offence of causing bodily injury by driving a motor vehicle carelessly on 17 July 1989.

The appeal was lodged on 3 November 1989 and as a result the sentence of periodic detention was suspended by virtue of the provisions of the Summary Proceedings Act 1957. The Appellant had at that time attended both on the induction

evening and on one subsequent occasion. The appeal was not lodged in this Court until today for reasons outside the control of the Appellant, the Respondent or this Court.

The position has, to some extent, changed since the matter was dealt with in the District Court and it is necessary to refer briefly to the facts which attracted the sentence and to other relevant events.

The Appellant's offending occurred on the evening of the day in question when, as a result of taking a corner at speed, he was unable to keep the vehicle on the lefthand side of the road, and the car mounted a curb and slammed into a tree on the opposite side of the road, with extensive damage to the vehicle and with a passenger suffering a bad knock to the head and shoulder area with moderate bruising.

It appeared clear that the driving incident had been contributed to by the alcohol consumed by the Appellant, as he had an evidential breath test which showed that he had 400 micrograms of alcohol per litre of breath, something less than the amount required to constitute an offence in respect of breath alcohol levels.

The Appellant, at the time of the incident, was 17 years of age and at college. He is now 18 years of age. He is still at college but he is seeking employment.

When the Appellant came before the District Court for sentence, the District Court Judge stood the matter down to obtain a community service assessment. The Probation Officer reported that the Appellant would consent to such a sentence and that suitable community service may be available and that such a sentence was recommended. The comment was made that the community service would have to be done outside school hours and that a remand to check availability of community service would be helpful.

The District Court Judge did not advert to that aspect of the matter when sentencing the Appellant, presumably because he took the view that the limitations upon the Appellant serving a sentence of community service were too great. In his sentencing remarks he referred to the level of alcohol in the breath of the Appellant and that the driving incident was one that was all too common with young men of the Appellant's age group who contributed far more substantially to accidents within the community in proportion to their numbers than other groups within the community. He referred to the Appellant driving too fast and driving generally in a stupid fashion. He took the view that a sentence of periodic detention was the only appropriate sentence having regard, as I have said, presumably to the limitations on a community service sentence, and because a fine was out of the question having regard to the Appellant being a student.

The maximum penalty for the particular offence was three months imprisonment and a fine of $3,000.

After the appeal was lodged there was doubtless some delay in respect of it to obtain notes of sentencing from the District Court Judge who had, at the end of 1989, moved from Hamilton to Christchurch. Whatever the causes thereafter, unfortunately the file was not dispatched to this Court until yesterday.

The Appellant confirms that he is still in no position to pay a fine, which is understandable having regard to him still being a student. He prefers to see the appeal finally dealt with today, if at all possible, as any further inquiry into a sentence of community service would merely result in further delays, regardless of whether such service was available or not. His concern is that he is seeking employment and that, having regard to the uncertainty of the sentence hanging over him, he cannot enter into any commitment for Saturday work at the present time. It was indicated from the Bar that community work at the Appellant's local primary school might have been available between the end of the last college year and the Christmas vacation. I am informed community work may still be available at that school but there is still the limitation of hours relating to it and it seems unlikely that the Appellant would be able to fulfil a sentence of community service at that school at the present time.

The main emphasis of the submissions on behalf of the Appellant was that, having regard to the delays brought about through no fault of the Appellant, the Court should take a merciful view of the sentence under appeal, not on the basis that it was necessarily excessive in itself, but that the matter has been hanging over the head of the Appellant since November of last year and the appeal has only been brought to the attention of this Court as a result of a complaint to the Court Manager for the region.

Counsel for the Appellant refers to a decision of the Court of Appeal in R v Faulkner and Bibby (unreported, CA.42 and 43/85, 21 April 1986). That, however, was a case of an exceptional nature dealing with circumstances far different from the present ones and I do not find it helpful to refer to it in any further detail whatever.

In the present case it seems clear that the sentence imposed is neither manifestly excessive or wrong in principle. The only basis upon which the sentence can properly be reconsidered in this Court is if there are exceptional circumstances calling for its revision. It is basically under that head that the appeal has been put to me.

For the Respondent, submissions have been made in answer to that in that the period for which the appeal has been outstanding has not been exceptional, even if not contributed

to by the Appellant, and that the sentence has been suspended solely as a result of the provisions of the law.

Having regard to all the circumstances, I think the [illegible] give acknowledgement for having the sentence hanging over him for such a period having regard to his years and having regard to his present search for employment. The period of disqualification, which would normally have run in tandem with the sentence of periodic detention, has expired. The Appellant, to attend the periodic detention centre, will be dependent upon his parents' vehicle.

I bear in mind the part of the sentence already served by the Appellant. The sentence under appeal is quashed. In substitution therefor, the Appellant is sentenced to eight weeks periodic detention and is ordered to report for the first time to the periodic detention centre at 10 Myrtle Street, Hamilton, at 6.00 pm on Friday 8 June 1990, thereafter the Appellant is to report on such occasions each week as the Warden specifies. His attendance on any occasion is not to exceed nine hours.

Solicitors for the Appellant:	Allen Needham & Co Morrinsville
Solicitor for the Respondent:	Crown Solicitor Hamilton