

IN THE HIGH COURT OF NEW ZEALAND <sup>9/10</sup> A.P. NO: 170/90  
WELLINGTON REGISTRY

BETWEEN

HUGHES

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

2004

Hearing: 19 September 1990

Counsel: Rennie Gould for Appellant  
M T Lennard for Respondent

Judgment: 19 September 1990

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ORAL JUDGMENT OF JEFFRIES J.

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Appellant in this case was apprehended at 10.30 p.m. on Saturday 24 March 1990 driving his car in Constable Street, Wellington. On being spoken to he demonstrated obvious signs of having consumed alcohol and the breath screening test was positive, leading to an evidential breath test which returned a reading of 0500 micrograms of alcohol per litre of breath. He declined to have a blood sample taken and faced that charge. The summary of facts records that he was co-operative throughout the testing procedures. Five hundred micrograms whilst an offence beyond dispute, and he pleaded guilty ultimately, is not one of the most serious kind.

The difficulty in sentencing appellant was his record in this particular category of offending. Toward the end of 1987 he committed two similar offences for which he was sentenced one

year later. About 2 1/2 years after the first two offences he offended again and that means he accumulated three such offences inside three years. I note from the record that he is not free from other offending, particularly in regard to driving and also driving while disqualified. Appellant had beyond question become a definite candidate for a prison sentence in view of repeated offending in that category which indicates an inability on his part to learn from his past mistakes and experience.

He came before the learned District Court Judge for sentence on 20 July 1990. On that occasion there was a favourable Probation Officer's Report on this young man. He is now aged 25 years, is living in a stable de facto relationship with a young woman and they have two children. He is presently employed in the Wellington City Council Parks and Recreation Department, and there is a letter from his immediate superior describing him as punctual, reliable and hardworking and the Department is happy to have him in its employ. Other than the matters that I have already mentioned in his record, other factors indicate he is settling after an initial period of some disturbed behaviour. It also seems beyond question he has a problem with alcohol although the Probation Officer seems to accept his own assessment he does not. It is not an assessment I accept. At the time of sentencing he also had \$605 outstanding in fines and he was paying those off gradually by weekly instalments of \$40. The learned District Court Judge, after surveying matters just mentioned by me, decided that the candidacy for an imprisonment sentence as previously mentioned by me should operate and he was sentenced to 21 days imprisonment but the outstanding fines at this stage of \$605 were remitted.

He was granted bail pending this appeal against the sentence of imprisonment. Miss Gould on behalf of appellant has made several of the points previously mentioned, laying particular emphasis on the stability of his domestic situation and his

work record. Those are two important matters. I have been persuaded a sentence of imprisonment should not have been imposed on this occasion. Appellant is in regular employment and the possibility of a term of imprisonment might jeopardise that particularly stable part of his life. I think it is a close case but nevertheless I have been persuaded that a non-custodial sentence will meet the nature of the offending in this particular instance. I think he should serve some substantial sentence and I therefore quash the present sentence and sentence him to three months' periodic detention. He is to report at the Wellington Periodic Detention Centre, 6 p.m. on Friday 21 September and thereafter as directed. Part of this sentence is also to quash the order whereby the fines were remitted and to leave them as they are, being he must continue to reduce the now outstanding sum of \$285 at the rate of \$40 per week. To the extent mentioned, the appeal is allowed.



Solicitor for Crown:

Crown Solicitor, Wellington