IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP.64/91

BETWEEN VERNON REX DIXON

Appellant

AND MINISTRY OF TRANSPORT

Respondent

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Hearing: 11 April 1991

Counsel: B. V. MacLean for Appellant
Y. V. Yelavich for Respondent

Judgment: 11 April 1991

ORAL JUDGMENT OF WYLIE, J.

This appellant was sentenced in the District Court at Henderson on one charge of driving while disqualified and on another charge of driving with excess breath alcohol. He was sentenced to three months' imprisonment on each charge and disqualified from driving for 12 months from 10 April 1992, being the expiry date of earlier disqualification periods.

In regard to the excess breath alcohol charge the level of breach alcohol was 511 microgrammes. Being an unlicensed person the maximum permitted was 150, and so on that basis the quantity was more than three times the permissible level.

The appellant has a number of previous convictions for

driving offences. There are some minor matters of speeding which I can ignore, but there are two excess breath alcohol offences in April and October 1989 respectively and four previous offences of driving while disqualified in July and October of 1989, April of 1990 and January of this year. Thus the appellant was appearing before the District Court on these two charges, one being his third excess breath alcohol charge and the other being his fifth disqualified driving charge.

Counsel has urged that this young man, aged 25, has been out of a job for more than two years, but has in recent times obtained part-time employment and has the promise of a full-time permanent position with that employer, but which will not be open to him if the sentence of imprisonment is upheld. That is a consideration which apparently was not put before the District Court by counsel who then appeared for the appellant, who was not counsel appearing today.

Counsel has also mentioned that the sentencing Judge did not give any allowance for five days that the appellant had spent in custody. He also urged on me s.7 of the Criminal Justice Act which requires the Court to take into account the desirability of keeping offenders in the community in considering whether a sentence of imprisonment should be imposed.

Counsel informed me from the bar that the appellant has sold his motor-car and has bought a bicycle, that he has

undertaken a self-treatment programme for his alcohol problem and recognises the cause of his difficulties as lying in alcohol. The pre-sentence report expresses the opinion that he was not sufficiently motivated to cope with his alcohol problem by undertaking a Salvation Army Bridge Programme. An earlier pre-sentence report for another occasion also indicates that he had not previously given any consideration to his alcohol problem but he did then indicate a willingness to undergo some form of treatment. It clearly has not been successful.

The District Court Judge was asked to give the appellant a term of periodic detention. He was unwilling to do so and I can fully understand his decision in that respect. This man has offended repeatedly. He has been given the benefit of periodic detention on earlier occasions, but that has clearly not been sufficient deterrent to him. The offences carry liability to substantial terms of imprisonment and notwithstanding s.7 of the Criminal Justice Act it is clear that repeated offending must ultimately demand a term of imprisonment as the legislature has provided, in an effort to provide a sufficient deterrent to to cause an offender to stop such a course of conduct.

I am not persuaded that the prisoner's misfortune of possibly missing out on the opportunity of a job is a sufficient consideration to deter the Court from upholding the sentence of imprisonment that has been imposed. In my opinion

the District Court Judge had little, if any alternative, but to impose such a term. In my opinion it certainly cannot be regarded as excessive or inappropriate.

In regard to the non-allowance of any credit for the five days spent in prison, I am not disposed to interfere with the term imposed for such a short period. Section 81 of the Criminal Justice Act does not, as did its predecessor, require a mandatary and precise assessment of time spent in custody by way of reduction or crediting to the term imposed and it is in the discretion of the Court as to what allowance, if any, it is practical to make. The short period involved here is not such in my opinion as to justify an interference in the sentence imposed which I am satisfied was entirely within the range open to the District Court Judge.

Accordingly, the appeal is dismissed.

Solicitors: Davenports, Auckland for Appellant
Crown Solicitor, Auckland for Respondent