

IN THE HIGH COURT OF NEW ZEALAND  
INVERCARGILL REGISTRY

AP 13/91

930

BETWEEN GARRY WILLIAM BROOKLAND

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 19th April 1991

Counsel: D.G. Slater for Appellant  
J.N.P. Young for Respondent

---

ORAL JUDGMENT OF WILLIAMSON J.

---

Garry William Brookland appeals against a sentence of 12 months' imprisonment which was imposed on him in the District Court at Invercargill on the 14th February 1991. The sentence was in respect of a charge that on the 6th February 1991 he drove a motor vehicle on State Highway 1 while disqualified from holding or obtaining a driver's licence. The Appellant had been convicted on a number of previous occasions of driving while disqualified.

The circumstances of this particular offence were that the Appellant was stopped at Kennington while driving a Toyota motorcar. He said he was driving some friends back from Dunedin. Inquiries then revealed that he had been disqualified from driving on the 21st April 1989 for 1 year from the 23rd February 1990. He admitted that he had been in Court at the time of the order and was aware that he was disqualified at the time he was

stopped. Tests taken at the time indicated that his breath alcohol level was excessive and he was also convicted in relation to an offence of that nature. His level on this occasion was 700 microgrammes.

The Appellant is aged 32 and has a history of previous offending, primarily for driving matters, although there are some offences of dishonesty as well. He was convicted of driving with excess blood alcohol in 1979, 1986, 1987, 1988 and 1989. As a result of the initial convictions in this regard he was disqualified from driving and has been convicted of offences of driving while disqualified on the 20th November 1987, 23rd February 1988 and 21st April 1989 (two offences). On the latter he was sentenced to imprisonment for 9 months.

When he appeared in the District Court on the 14th and 28th February this year he was sentenced by a District Court Judge who set out in his remarks on sentencing the personal difficulties which the Appellant has experienced during his life and in particular with alcohol. He referred specifically to the nervous problems which may be at the base of the Appellant's offending, and the subsequent effects, not only in the level of sentences imposed for the offences previously mentioned, but also in the Appellant's bankruptcy.

These remarks on sentencing show understanding of the Appellant's problems and the way in which such problems may have led to the present offence. The District Court Judge finally, however, concluded that, because of the previous offending and

sentences, there was no real alternative but to impose a further sentence of imprisonment.

My task on this appeal is to determine whether it has been shown that the sentence imposed was clearly excessive or inappropriate. The Court is conscious that driving offenders may form a special category. Indeed some articles written about it suggest that continual offending of this nature is like a disease or an addiction. Those articles also suggest that imprisonment may not have any effect on altering the pattern of behaviour of the offenders. In addition the Court is conscious that some claim there are too many persons in our prisons who are there solely because of driving offences.

Ultimately the Court's task is to consider the individual position of a particular offender or Appellant. This Appellant initially was given sentences of a conservative nature, namely fines and later periodic detention and ultimately short terms of imprisonment. If, as appears the case, these have not altered his pattern of behaviour then the Court, given the present options available to it, has little alternative but to send such a person to imprisonment and for terms that indicate clearly that if such offending continues then longer and longer terms will be necessary. Other possible options suggested by academic writers depend upon the resources being available to provide such alternatives.

After hearing the detailed submissions of Counsel for the Appellant, I have not been brought in this case to the view

that the sentence was clearly excessive and, accordingly, the appeal must be dismissed.

*J. Williamson* J.

**Solicitors:**

Macalister Bros, Invercargill, for Appellant  
Crown Solicitor, Invercargill, for Respondent