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Cum

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

A.P. No.173/91

2073

BETWEEN SHANE DOUGLAS THOMSON
Appellant

A N D POLICE
Respondent

Hearing: 2 August 1991
Counsel: E. Bedo for Appellant
 M.A. Treleaven for Respondent
Judgment: 2 August 1991

ORAL JUDGMENT OF TIPPING, J.

This appeal by Shane Douglas Thomson is against a sentence of four months imprisonment imposed on 4 July 1991. That period of four months was imposed cumulatively on a total sentence of eight months imposed on 26 April. On 26 April the Appellant was appearing for sentence on three charges of driving while disqualified and at least one of excess breath alcohol. He received eight months on the driving while disqualified charges and three months concurrent on the breath alcohols.

What gives rise to this appeal is that three weeks prior to 26 April the Appellant drove while disqualified yet again. He had attempted to ensure that all charges were before the Court at the one time. In the event, for whatever reason, the 3 April offence was not

before the Court when the sentence was imposed on 26 April. The Appellant takes the view that if this additional offence had been before the Court on 26 April he would not have been sentenced to any more than eight months.

The learned Judge appears to have been aware in general terms of this background because he says in his sentencing remarks "I appreciate and realise the situation that the Court is in". I take that as being a reference to this particular problem. However His Honour went on to say that he was satisfied that a concurrent sentence was not applicable and that is why he imposed four months cumulative. I can understand the point that the Appellant makes through Mr Bedo and makes well, but the real question is whether or not had all these matters been dealt with together twelve months overall could have been regarded as manifestly excessive.

If all matters had been together the Court would have been sentencing for what then would have been the twelfth, thirteenth, fourteenth and fifteenth charges of driving while disqualified. The learned Judge observed that for a fifteenth charge someone might be looking at a two year sentence at least. I am not going to be drawn on the force of that observation but I can say immediately that someone would have been looking at one year at least.

I am not satisfied that if all matters had been dealt with together twelve months would have been manifestly excessive. I take Mr Bedo's point about the

appearance of injustice to this Appellant. I think on rational examination that appearance really is not there. The Appellant can perhaps regard himself as fortunate at having got only eight months on his twelfth, thirteenth and fourteenth. The fact that he got a very lenient sentence there hardly makes the four months cumulative on this occasion the subject of criticism as being either inappropriate or clearly excessive.

I have considered the point put forward by Mr Bedo but on analysis I do not think it has any validity. The appeal is dismissed.

A handwritten signature in black ink, appearing to be 'Alicia Zing' with a small mark at the end.