IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

AP 5/92

BETWEEN HEYBLOM

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 23 March 1992

Counsel: Appellant in Person
M Smith for Respondent

Judgment: 23 March 1992

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ORAL JUDGMENT OF ROBERTSON J

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Leo Tauwhitu Heyblom appeals against a sentence of seven months periodic detention imposed upon him in the District Court at Tauranga on 24 February 1992.

He is not represented before me. He was not represented before the learned District Court Judge. He has a friend and neighbour, Mr Gifford, who has taken a particular interest in him. Mr Gifford wrote a letter in

mitigation which as I understand it, Mr Heyblom handed to the District Court Judge.

This is one of these cases which arises out of the long busy lists which we require District Court Judges to hear all over the country and not surprisingly, there is no record of what was said. Mr Gifford's letter suggested that the matter be dealt with by way of periodic detention and Mr Heyblom tells me that the Judge, having read the letter, asked him if that was really what he wanted. Having heard and seen Mr Heyblom, I have no reason to not accept that that is what was said. It is in fact consistent with what I would have anticipated. Although he drove badly and his blood alcohol level was far too high, it was less serious than some charges which come before the Court. It is within a range where one would have anticipated that the matter would have been dealt with by way of a monetary penalty if the defendant had the means.

Mr Heyblom had this interchange with the Judge - confirmed that was what he wanted. That is what he got. As Mr Smith, with some nicety has commented today, I suspect the real complaint is that he did not realise he was going to get quite as long as the sentence turned out to be. One can only speculate as to the exact reasons for the length of sentence. Mr Heyblom says (and it would be consistent with the letter from Mr Gifford) that the sentence was intended to wipe out $690 in unpaid fines relating to two previous traffic matters.

Mr Gifford's letter as well averted to a previous conviction for drinking and driving. The appellant tells me that that matter was not mentioned by the District Court Judge at all so the extent to which that had an influence and whether he was treated as a first offender or a second

offender it is not possible for me to conclude. For the purposes of this appeal I treat Mr Heyblom as a second offender. It may appear to him harsh, and having seen him I do not disbelieve what he says, but a Court has no option but to maintain the integrity of the record. It would be an intolerable situation if a person, for whatever reason, could accept responsibility, be dealt with by the Court and then at a later date ask another Court to view the matter differently. If Mr Heyblom wishes to have that conviction removed from his record and thereby avoid any effect which it might have long term, then he will have to contact the authorities and provide the necessary information to them for the matter to be pursued.

That aside, it does appear that this is a situation in which had it not been for the appellant's request, he would have been dealt with by way of a monetary penalty. On that basis it is hard to avoid the proposition now that the penalty imposed was one which is wrong in principle. The issue which arises is when a person makes a request of that sort and after the Court adopted that course of action at his request, should he now be permitted to retract from that situation? As a general principle and to avoid the system being played, I would have thought that a person having made a choice, is bound to live with the consequences of it.

This is a 25 year old man living with others to whom he has provided assistance during a time of illness. He has been in the one job for just on six years.

By a hair's breath I am prepared to accept that there are exceptional circumstances here which require that on this appeal I now deal with the matter in the way which it is clear by inference, the learned District Court Judge was of the view that the matter should have been dealt with until the

appellant himself deflected him from that course. This man is earning at a sufficient level so can pay an appropriate monetary penalty and meet the fines previously imposed which had been outstanding for too long.

The periodic detention was to cover both this offence and the other fines which were remitted. I will allow this appeal on the basis that the remission of the fines is now expunged. The previous fines will remain outstanding. Accordingly the appeal against the periodic detention is allowed. In respect of this offence the appellant is fined $750 and ordered to pay medical fees, $59.92 and analyst's fees of $54. The total monetary penalties in respect of this together with any sums outstanding on conviction 0063007358 in the Tauranga Court on 22 July 1991, and in respect of conviction 1058004806 in the Putaruru Court on 3 September 1991, are to be paid by weekly deductions from his income from AFFCO at Te Puke of $50, first payment on 2 April, and thereafter until all amounts owing in respect of this and the other two matters referred to have been met.

The disqualification previously imposed of six months from 24 February is confirmed.

Solicitors

Crown Solicitor, Rotorua for Respondent