NZLR
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IN THE HIGH COURT OF NEW ZEALAND 13/5
ROTORUA REGISTRY

AP. 19/94

543

BETWEEN DORSET

Appellant

AND POLICE

Respondent

Hearing: 2 May 1994

Counsel: L. Bidois for appellant
J. McDonald for respondent

Judgment: 2 May 1994

(ORAL) JUDGMENT OF HILLYER J

This is an appeal against a refusal of an application for removal of disqualification under S.79 of the Transport Act 1962.

That section provides that when a person has been disqualified he may, after the expiration of six months from the date on which the order of disqualification became effective and thereafter from time to time, apply to the Court by which that order was made to remove the disqualification. The section then goes on that on any such application the Court may, having regard to the character of the applicant and his conduct subsequent to the order, the nature of the offence and any other

ircumstances of the case, remove the disqualification or refuse the application.

Subsection (1)A then sets out a number of matters to which the Court must have regard in considering any application under subsection (1) of the section.

The appellant on 18 May 1993 was convicted of drunken driving and, amongst other penalties, was disqualified from holding or obtaining a motor driver's licence for a period of 18 months. That period would therefore expire on 17 November of this year. He appealed against the sentence. On 5 July 1993 that appeal was dismissed by Temm J. On 3 December 1993 he made the application for removal of disqualification under S.39 which was refused. On 14 January 1994, a notice of appeal was filed. There was some delay in the matter coming before the High Court.

On 25 March 1994 he applied again for removal of the disqualification under S.39. That application came before District Court Judge P.J. Bate who had heard the application on 3 December 1993. The learned District Court Judge granted the application but made the removal of disqualification effective as from 1 June 1994. His period of disqualification therefore has just over a month to run. More particularly, the District Court Judge again considered the submissions which Mr Bidois makes as to the removal of the disqualification.

This being an appeal against the decision of the learned District Court Judge, counsel agree that I should deal with the matter as at 3 December 1993 when the Judge dealt with it. The Judge noted that the appellant had taken some steps referred to in S.39(1)A, in that he had attended a defensive driving course and had a number of medical examinations which indicated that he had not been drinking.

Mr Bidois advises me that the appellant has in fact appreciated the error of his ways and reformed so far as his drinking and driving habits are concerned, which in the light of the warning he was given and the fact that it was his third conviction for drunken driving, was prudent. The first conviction was in 1980 but, as the District Court Judge noted, the remaining two were much more recent.

The learned District Court Judge said that the Court had a responsibility to look at matters other than the reform of the appellant. He said that the Court had to look at the question of fairness with other people and that having regard to the fact that the appellant had been disqualified for his third conviction, a complete restoration immediately after the six months had elapsed was not proper. He went on to say that the application would be refused but that a further application could be made after some further period because it might well be

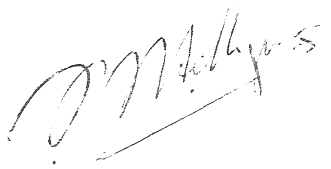
appropriate to restore his licence before the full 18 months had elapsed.

Mr Bidois submits the section provides that a person may make an application after six months. There is nothing to say that he may not. I accept that submission but the section provides that the District Court Judge may have regard not only to the nature of the offence but to any other circumstances of the case. In other words, it appears that the Judge has a very wide discretion which in this case he has chosen to exercise by refusing the application.

Where a District Court Judge exercises his discretion in circumstances where he is well entitled to do so, this Court will not interfere with such an exercise. I see no reason why the exercise of that discretion should be interfered with in this case. I have been referred to the decision of Williamson J in **McHugh v MOT** (High Court, Invercargill, AP.64/91, 5 December 1991) and the decision of Ellis J in **Turner v MOT** (High Court, Hamilton, AP.350/85, 1 November 1985) but there is nothing in those decisions which goes against the principle that I have set out that where a District Court Judge has exercised a discretion the High Court will interfere only if the discretion has been exercised on a wrong basis. The District Court Judge did appreciate that the appellant might qualify for restoration before the full 18 months

had elapsed and that he had done his best to reform his ways.

The appeal is therefore dismissed.



Solicitors: Crown Solicitor, Rotorua, for respondent