

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

AP 59/94

Bitternorks.
Hall

BETWEEN JASON MURRAY CHARLES
ROBBINS

Appellant

A N D THE POLICE

Respondent

Hearing: 18 July 1994

Counsel: Appellant Appears In Person
R P Bates for Respondent

ORAL JUDGMENT OF WILLIAMSON J.

On 24 May 1994 in the District Court at Alexandra the appellant, Jason Robbins, was convicted on a charge of driving while disqualified and was then disqualified from holding or obtaining a driver's licence for 6 months from 28 May 1994. He has appealed to this Court upon the basis that the disqualification is clearly inappropriate having regard to the availability of community service and the effect which the disqualification will have on his employment.

On 14 January 1994 the appellant was convicted of careless driving and fined \$400 and ordered to be disqualified from driving for 4 months from 28 January 1994. On Sunday morning 13 March he was stopped driving a vehicle on Beacon Point Road at Wanaka.

94/1238

set 7

rad
copy ✓

At the time he said he was taking a girl back to her address and thought that he was on a track rather than a road. He says that he altered his plea when he appreciated that the place where he was driving might well legally have been a road. There was no element of liquor or of bad driving involved in the offence. At the time of the hearing in the Alexandra District Court the Probation Officer indicated to the appellant that he would recommend a sentence of community service. This was primarily to enable the appellant to be able to continue with his employment. Up until that time, despite his disqualification, he had been able to carry out his work because an employee of his had a licence and was able to drive. This state of affairs, however, was not to continue because the employee was otherwise unsuitable. The appellant says that when he explained these difficulties to the District Court Judge he was told that the Judge was not prepared to consider community service and that the appellant could apply for a limited licence in order to avoid the problems arising in his employment. Since then the appellant has been advised that he is not entitled to such a limited licence because the order for disqualification was made in relation to an offence of driving while disqualified.

Under S30AC of the Transport Act 1962 the law provides that the Court may decide not to order a person to be disqualified provided certain specific tests are made. The full text of the section is as follows:-

"Community-based sentence may be substituted for disqualification directed under this Part in certain circumstances
- (1) Notwithstanding any provision of this Act that requires a Court (in the absence of special reasons relating to the offence) to order a person convicted of an offence to be disqualified from holding or obtaining a driver's licence, where -

- (a) The offender has previously been ordered on conviction for an offence to be so disqualified; and

- (b) The Court, having regard to -
 - (i) The circumstances of the case and of the offender; and
 - (ii) The effectiveness or otherwise of any previous order of disqualification made in respect of the offender; and
 - (iii) The likely effect on the offender of any further order of disqualification; and
 - (iv) The interests of the public, -
 considers that it would be inappropriate to order that the offender be disqualified from holding or obtaining a driver's licence; and
- (c) The Court considers that it would be appropriate to sentence the offender to a community-based sentence in accordance with Part III of the Criminal Justice Act 1985,

the Court may determine not to order that the offender be disqualified from holding or obtaining a driver's licence.

(2) Where the Court sentencing an offender determines pursuant to this section not to make an order of disqualification,

- (a) The Court shall impose a community-based sentence on the offender; and
- (b) The imposition of such a sentence shall be without prejudice to the power of the Court to impose any other sentence in respect of the offence that, in accordance with the provisions of the Criminal Justice Act 1985, it may impose in addition to the community-based sentence; and
- (c) In determining the appropriate sentence to be imposed on the offender in respect of the offence, the Court shall take into account the gravity of the offence and the fact that the offender would otherwise have been liable to disqualification from holding or obtaining a driver's licence."

The first test under para 1(a) is to enquire whether an offender has previously been ordered on conviction to be disqualified. The appellant meets that test in that he has been disqualified in 1992 and again at the beginning of 1994. This would constitute his third disqualification.

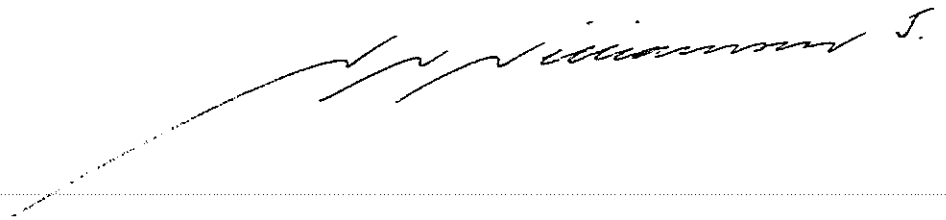
The circumstances of this case do not put it into the very serious category of disqualified driving and the circumstances of the appellant are unusual in so far as he is a young person, self-employed and apparently has been able to carry on a growing business without problem for approximately a year. (See para 1(b)(i)).

Other matters requiring consideration concern the effectiveness of an order for disqualification and the likely effect of any further such order (para 1(b)(ii) and (iii)). In addition the Court is required to have regard to the interests of the public. The nature of the appellant's business will require him to travel on occasions to remoter areas. The disqualification has the likely effect of preventing him carrying out his employment and perhaps losing the major part of the business he has built up. The interests of the public (para 1(b)(iv)) will be met by a community service or other community based sentence because the appellant's driving record does not show any potentially dangerous offences of driving under the influence of alcohol nor of gross driving conduct. As is important in most sentencing matters, the Court has to balance up a whole raft of various factors. This Court has had an opportunity to consider a number of those in greater detail than the District Court Judge had. It is also to be noted that under S38(2)(a)(i) an order for a limited licence cannot be made when the disqualification order arises from an offence under S35(1) of the Transport Act 1962.

Weighing all of the matters that are presently before this Court, I have reached the view that, in these particular circumstances the appropriate sentence is one of community service. As has been emphasised in a number of cases where the section has been applied, community service is not a soft option. It is meant to emphasise to the offender that he has breached the law and that any further breaching of the provisions of the

Transport Act in this or a similar manner could lead not only to a more severe sentence but also to a long period of disqualification. The appellant has confirmed that he realises that and realises that in being permitted to carry out a community based sentence rather than disqualification, an option is being exercised in relation to him that may not be available in the future.

Before any such sentence of community service can be imposed, the Court has to have evidence that a suitable authorised service is available for the offender to perform. At this stage, while the appellant says he had an indication from the Probation Officer to that effect, there is no evidence before the Court to enable such a sentence to be imposed. Accordingly this appeal will be formally adjourned with a direction that the Registrar contact the Probation Service at Queenstown to enquire whether a suitable service of 50 hours community service is available. Upon confirmation that it is, and having regard to the appellant's submissions and his consent, the present sentence of disqualification for 6 months will be quashed and 50 hours community service substituted.

A handwritten signature in black ink, appearing to read 'J. Williams', is written across the page. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Solicitors: Appellant Appears In Person
Wood Adams, Dunedin, for Respondent