

IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

AP48/94

1A SE ✓

BETWEEN

GLENN DONALD
WOODFORD

Appellant

AND

POLICE

Respondent

Hearing: 13 and 14 December 1994

Counsel: W N Dawkins for Appellant
J N P Young for Respondent

J3 x

ORAL JUDGMENT OF FRASER, J.

J
disc 37
5.30

This is an appeal against part of a sentence, namely, a three year disqualification order in respect of each of three charges of careless driving causing death.

The circumstances are that at about 4.20pm on 5 July 1994 the appellant, who was driving a motor vehicle on State Highway 94, failed to negotiate a bend in the road and his vehicle crossed the centre line into the path of, and collided with, an oncoming vehicle. The driver of the other vehicle, his seven year old son and a rear seat passenger died as a result of injuries received in the accident. A second rear seat passenger in that vehicle, the appellant himself and two passengers in his own vehicle all suffered severe multiple injuries.

The appellant, who was aged 18 years at the time, lived in Mossburn and was employed as a meat processor. He had no previous convictions.

In his sentencing remarks, the District Court Judge carefully reviewed all relevant factors, sentenced the appellant to 200 hours community service, ordered him to make reparation of \$1,000 to the families in respect of each of the three victims and disqualified him from holding or obtaining a motor driver's licence for three years.

While not challenging the community service or the reparation, it is submitted that they were the maximum which could have been imposed in the circumstances and that the disqualification has to be seen in the context of and in relation to them. The fundamental point Mr Dawkins makes is that having regard to the general approach taken by the High Court in cases of this sort the period imposed in the present case is manifestly excessive.

In the course of his argument Mr Dawkins referred to *Reid v Police*, M58/82, Nelson High Court, 24/2/84, Savage J; *Paintin v Ministry of Transport*, AP 25/90, Rotorua High Court, 10/10/90, Fisher J; *Whitton v Ministry of Transport*, M28/91, Wanganui High Court, 22/5/91, Jeffries J; *Whitehead v Police*, AP 43/92, Rotorua High Court, 23/11/92, Penlington J; *Bowman v Police*, 10 CRNZ 558; and *Edgeworth v Police* AP 320/93, Christchurch High Court, 22/10/93, Williamson J. He also referred to several cases in respect of careless driving causing injury. It is unnecessary, I think, to review in detail the cases cited to me but it may be observed that in the death cases the periods of disqualification fixed on appeal, or imposed in the District Court and not challenged on appeal, range from six to 18 months. All of these cases were ones in which the careless driving had caused the death of one person. No case was cited such as the present in which there had been multiple deaths.

As counsel emphasised, and as the Judge had acknowledged in his remarks, the first point to be considered was the degree of carelessness and in this

respect the Judge expressly found that the carelessness consisted of inattention. This was obviously material to an assessment of the appellant's culpability and must have been one of the factors leading the Judge to conclude that imprisonment was not required.

It is also necessary to have regard to the consequences and here the relevant fact is that three deaths tragically ensued. Mr Dawkins accepted that this must be taken into account and that disqualification for a period longer than that which might be appropriate in the case of one death, could properly be imposed but he argued that an extension to three years was unjustified and manifestly excessive.

No doubt there is room for difference of opinion as to what extent the consequence of three deaths from one act of carelessness should have on the length of disqualification ordered and obviously there is no absolutely correct and universally applicable answer. It depends on a balancing of the circumstances of the offence and the offender and the penalties otherwise imposed.

In the end, and notwithstanding the carefully presented submissions made by Mr Dawkins, I have come to the view that in the particular circumstances of the present case the three years' disqualification was not manifestly excessive.

The appeal is accordingly dismissed.