IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP 285/96

BETWEEN CHARLES EDWARD HOHAIA

Appellant

AND POLICE

Respondent

Hearing: 10 October 1996

Counsel: R Gould for Appellant
M J Bodie for Respondent

Decision: 10 October 1996

ORAL DECISION OF GENDALL J : APPEAL AGAINST SENTENCE

Solicitors:

R Gould, Wellington for Appellant
Crown Solicitor's Office, Wellington for Respondent

This is an appeal by Charles Edward Hohaia against a sentence imposed upon him in the District Court at Wellington on 27 September 1996 after he was convicted firstly of an offence under s58(1)(A) of the Transport Act of driving with excess breath alcohol, a level of 459 micrograms of alcohol per litre of breath, and secondly of driving whilst disqualified having previously been convicted of the offence of driving whilst disqualified in breach of s35(1)(A) of the Transport Act 1962.

The learned District Court Judge imposed a sentence of 12 months imprisonment on the offence of driving while disqualified together with a concurrent term of imprisonment of 3 months on the excess breath alcohol charge. In addition the appellant was disqualified from driving for a further finite term of 9 months commencing 21 February 1997, he having at the time of the commission of the offences for which he has been sentenced, being subject to indefinite disqualification. The appellant had over a period of 12 years amassed, it seems, 13 convictions for drink driving offences and 23 convictions for driving whilst disqualified. He had served terms of imprisonment ranging from 6 months to one year on previous convictions for driving whilst disqualified and had been subjected to a variety of sentences in respect of the breath alcohol offences, including terms of 3 months imprisonment imposed on 20 October 1995 which was served concurrently with a term of imprisonment of 9 months imposed for driving whilst disqualified.

Miss Gould has, in very thorough and careful submissions for which I am grateful, submitted to me that an appropriate sentence was a suspended sentence of imprisonment under s21A because there was some realistic hope for the appellant in the future that he had now had a stable job and the benefit of alcohol and drug assessment, a report which was produced to me and which was not available to the learned District Court Judge. Miss Gould also produced to me a letter from the appellant and a reference from his partner. Miss Gould submitted that the learned

District Court Judge in referring to the Court of Appeal pronouncements in August 1996 regarding the "cranking up" of penalties for this type of offending was in error because the Court of Appeal comments arose in the case of ***Fallowfield*** which was concerned with alcohol related driving which caused bodily injury. Whether the learned District Court Judge in fact referred to ***Fallowfield*** in the end really does not alter the position because the sentence that he imposed for the breath alcohol conviction (as contrasted with the driving while disqualified conviction) was a term of 3 months imprisonment and by no means can that be said to be an escalation or a 'cranking up' of the penalty for this type of offending.

The real point of Miss Gould's submissions relates to the period of imprisonment imposed for the conviction of driving whilst disqualified, namely a term of 12 months imprisonment. The deterrent aspect of such sentencing is aimed, not as Miss Gould submitted at high level drinkers but, at those persons who are subject to orders for disqualification and who repeatedly disobey such orders and drive having consumed alcohol. The previous record of the appellant can only be described as appalling. It seems the learned District Court Judge took the view that no other sentence but a term of imprisonment for a reasonably substantial period was appropriate. Within 6 months of being released from prison in February 1996 the appellant yet again drove for the 24th time whilst disqualified and at that same time had been drinking so as to exceed the limit prescribed by law. It is true that his family will suffer by him being imprisoned and that imprisonment might do him more harm than good but as Tipping J in ***Meikle v Police***, High Court, Invercargill Registry, AP 49/92, 20 November 1992 said that:

> "... only tells half the story. The other half is that society is entitled to some long term protection from the danger that this appellant poses on the roads until he can get himself sorted out."

His Honour goes on to say, and I respectfully agree with these comments:

> "... there is no doubt that drinking and driving is a major social evil and if people do it to this extent, and on top of that when they are not entitled to be on the roads at all because they are disqualified, the Courts have simply got,

> in the public interest, to take a firm line. Deterrence and public protection in this sort of case in my judgment is the predominant sentencing function."

I adopt those words and it is quite clear that the learned District Court Judge, although he did not specifically state it as such, adopted the same approach. It is to be hoped that the appellant can now control his alcohol problem but he was sentenced to 12 month imprisonment because of his problem in driving whilst disqualified because the order the Court made to protect the public continued to be flouted. That is just as much a problem for the appellant. I am not satisfied that the learned District Court Judge's assessment of the position or his sentence of the appellant can be said to be manifestly excessive. Indeed I entirely agree with him.

Accordingly the appeal is dismissed.

J W Gendall J