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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

AP 195/96

BETWEEN ALAN LESLIE SHEPHERD

Appellant

AND POLICE

Respondent

al/1358

Hearing: 17 September 1996

Counsel: Appellant in person  
A. Kiernan for Respondent

Judgment: 17 September 1996

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**ORAL JUDGMENT OF ANDERSON J**

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SOLICITORS

Meredith Connell (Auckland) for Respondent

On 28 January 1996 on State Highway 1 in the vicinity of Taupo township the appellant was stopped whilst driving a light commercial vehicle and required to take a breath screening test which he failed. He was then required to undergo an evidential breath test and this he also failed returning a result of 501 micrograms of alcohol per litre of breath. In the course of processing for that offence he gave his name and his address as 22 View Road, Mt Eden, Auckland, and was then released. Within three days an information had been sworn reciting the address he seems to have given when apprehended. The hearing date specified on the summons and information was Thursday 22 February 1996 in the District Court at Taupo. The appellant seems to have been aware of the time and date of that hearing and elected not to attend. Being an offence punishable theoretically by imprisonment, or some form of custodial sentence, the matter was not dealt with in his absence.

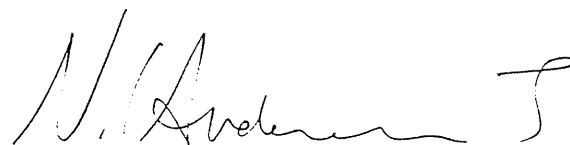
At some stage a warrant to arrest issued and pursuant to this warrant he was arrested at a residence in Auckland on or about 11 July 1996. Within five or six hours of his apprehension he was brought before the District Court at Auckland. He was offered the opportunity of legal assistance in the form of the Duty Solicitor but declined the same because he says he was expecting his own solicitor to arrive. The Court record shows that he pleaded guilty to one count of theft, apparently of a minor matter because he was simply ordered to come up for sentence if called upon within 12 months. In relation to the excess breath alcohol he was fined \$400 and ordered to pay medical costs and Court costs. He was disqualified from holding or

obtaining a drivers licence for a period of six months. The sentence is quite unexceptional.

He has now appealed to this Court against conviction and sentence. The anomaly of an appeal against conviction in circumstances where he has pleaded guilty after being offered legal assistance is sought to be explained on the basis that he was effectively deprived of legal assistance and was feeling unwell. He also submits in relation to penalty that he had voluntarily, in effect, elected not to drive in the mistaken belief that he would have been subject to an automatic cancellation of licence on the date when he was scheduled to appear in the Taupo Court.

This succession of unfortunate episodes would be more readily understood if he were a young and naive person with no experience of the Court system, but he is not young, I doubt that is naive, and he is extremely experienced in the Court system having been convicted on many occasions over the years for a number of offences, many of them serious. His last serious offence was some time ago and he was convicted on 20 July 1988 on three charges of threatening to kill and to do grievous bodily harm with a weapon. It is the case that he has kept out of trouble for some seven years. The point of the matter is that he is not a person unfamiliar with Court procedures. I do not understand him to have made an application for rehearing in the District Court on the grounds that he entered a plea of guilty erroneously or in other extenuating circumstances.

He has provided the Court with full written submissions about the background to the appeal but there is nothing verified by affidavit and nothing in any event which would induce this Court to uphold the appeal, however the District Court may have regarded such information on an application for rehearing. The appeal against conviction and sentence are each without merit and they are dismissed.

A handwritten signature in cursive script, appearing to read "N. Anderson J.", written above a horizontal line.

NC Anderson J