NZLR

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP No. 54/97

BETWEEN KEVIN ANTHONY HARTLEY

Appellant

AND POLICE

Respondent

Hearing: 12 March 1997

Counsel: D C McCaskill for Appellant
M Bodie for Respondent

Decision: 12 March 1997

ORAL DECISION OF GENDALL J

Solicitors:

D C McCaskill, Solicitor, Wellington for Appellant
Crown Solicitor's Office, Wellington for Respondent

This is an appeal against a sentence of 8 months imprisonment imposed in the District Court at Wellington on 14 February 1997. That 8 month term of imprisonment followed upon the appellant's plea of guilty to a charge of driving whilst disqualified. In addition, the appeal relates to a concurrent term of 2 months imprisonment imposed upon the appellant for driving with excess breath alcohol in breach of s58(1)(a) of the Transport Act 1962. The appellant was also sentenced to a term of supervision for a period of 6 months to run cumulatively upon the terms of imprisonment. No appeal is brought in respect of the order for supervision.

The essential facts are: The appellant was stopped in the early hours of the morning on 4 January 1997 and after failing a roadside breath screening test, he produced a result of 902 micrograms of alcohol on the subsequent evidential breath test. This was a high level. He was a disqualified driver by reason of his repeated driving after drinking alcohol. This event was the fourth occasion in the space of a year that the appellant had been apprehended and convicted of driving with excess breath alcohol. It was also the fourth occasion over the previous year that he had been stopped and apprehended driving whilst subject to orders for disqualification. To be specific: On 3 March 1996 he was driving with excess breath alcohol and was disqualified from driving. On 21 April 1996, ignoring the order for disqualification and again drinking prior to driving, he was stopped and subsequently convicted of driving whilst disqualified and of the breath alcohol offence. Not to be deterred, on 19 May 1996, the appellant again was driving whilst disqualified and yet again in breach of the alcohol/driving law. Yet again on 14 July 1996 he was stopped for driving whilst disqualified. The learned District Court Judge noted that a range of penalties had been imposed upon the appellant over the previous year, including periodic detention and fines, but correctly stated that the appellant was a person who:

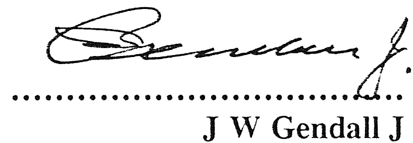
> "shows no responsibility either towards the community or the Court orders. Strong punitive and deterrent sentences must be imposed in respect of this offending to reflect the seriousness and the consistent and persistent offending".

The actions of the appellant over a year not only related to the flouting of Court orders but more importantly they placed the public at some risk. Repeated excess blood alcohol offences by a man who should not have been driving but who refused to accept, it seems, the Court's orders for disqualification, make him a risk to the public. Protection of the public is the purpose for which alcohol impaired drivers are disqualified so that those who have this mobile weapon in their control and who consume alcohol are prevented from putting the public at risk. The appellant continued to do so.

I agree with counsel that the term of imprisonment for 8 months on the charge of driving whilst disqualified could be said to be at the top end of the range but when viewed against the maximum penalty of 5 years for repeated offenders it is impossible to conclude that the sentence is manifestly excessive.

I am totally satisfied that the experienced learned District Court Judge was correct in the manner in which he approached the sentencing of the appellant. The terms of imprisonment that he imposed were fully justified.

The appeal has no merit and, accordingly, is dismissed.



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J W Gendall J