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NZLR

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP301/97



BETWEEN

DESMOND PAUL HILLS

Appellant

A N D

THE POLICE

Respondent

Hearing: 17 December 1997

Counsel: D.P. Hoskin for Appellant
W. Andrews for Respondent

Judgment: 17 December 1997

ORAL JUDGMENT OF WILLIAMS J.

Solicitors: Kidd Tattersfield & Co., DX BP64509, Takapuna
Crown Solicitor, DX CP24063 Auckland

On 7 November 1997 Judge Lockhart QC convicted Mr Hills on two counts of driving while disqualified on his plea of guilty and sentenced him to nine months' imprisonment on each, plus disqualifying him from driving for 12 months from 14 April 1998. Mr Hills appeals to this Court on the grounds that that sentence was excessive in the circumstances of the matter.

The charges arose out of driving by Mr Hills, first on 18 April 1997, and then on 22 September. On the former occasion he was stopped as part of a routine vehicle check and was found to be disqualified and said he was driving because the vehicle was unsafe and his partner was unhappy driving it. He was disqualified because a further order for disqualification had been imposed on him a mere three days earlier, on 15 April 1997, when he was again convicted of driving whilst disqualified and a further period of disqualification imposed.

The second offence arose when Mr Hills was again discovered at the wheel in a routine vehicle check and said he had just picked up his stepson.

Mr Hills' personal circumstances, which were before the learned District Court Judge, disclosed that he had had an unfortunate background up until about five or six years ago. He asserts that he was abused as a child, that led him to use drugs and for a period of some 14 years, up until he was 27, (he is now 33) he was addicted to heroin. However,

and he is to be congratulated for this, he has apparently remained free of drugs over the past six years or so.

His partner, with whom he has three children, is also a former drug addict who is now drug-free, and in her case it has had the doubly unfortunate consequence that she has severe medical problems resulting from her drug abuse, which often causes sudden and convulsive vomiting. She made that clear in a letter which was before the District Court. She has also had operations and, unfortunately, has a form of cancer.

The experienced probation officer, whilst acknowledging Mr Hills explanation for the driving, did comment that -

"Mr Hills did admit that in some ways he has a fixation/fascination with cars and also that his offending in relation to driving is in many ways akin to an addictive behaviour."

There is a wealth of justification for that view. Indeed the learned District Court Judge commenced his remarks on sentencing by noting that the two charges with which he was dealing were Mr Hills' eighteenth and nineteenth convictions for driving whilst disqualified.

Mr Hills has a most unenviable record, stretching back to 1981. Not only does it contain that large number of convictions for driving whilst disqualified, it also includes a number of charges of driving with excess breath alcohol. It also, as might be expected (given his history), contains a number of drug offences, but those should be put to one side in the light of Mr Hills' reform over the past six years. But of some weight in considering this matter, the conviction record shows a number of convictions where Mr Hill has failed

to appreciate the leniency extended to him by the Courts and has failed to comply with his obligations, not merely just his obligation not to drive whilst disqualified, but in relation to periodic detention, suspended sentences and the like. As the learned District Court Judge commented, Mr Hills has had every sentencing option extended to him, but still he fails to comply with his obligation not to drive and the probation officers' reports show that his response to such things as periodic detention has generally been poor as well.

It seems that Mr Hills precisely fits the comment made by the probation officer, that he has a fixation or fascination with driving which is addictive. It is difficult otherwise to understand how someone such as Mr Hills could contemplate driving in a situation where some mundane domestic requirement arises, such as picking up a child from school, and gets into a car and drives it, knowing that he has an extensive list of convictions for driving whilst disqualified, and if he is stopped, as he was, on routine checks on these occasions, that list will be added to and imprisonment, periodic detention, and suspended sentences will be the result.

That is not to belittle the problems which Ms Pearce, his partner, encounters, nor the medical situation from which she suffers, but it nonetheless remains the case that Mr Hills must simply find way other than driving a motor car, to deal with Ms Pearce's problems. It is also not to belittle the reform which Mr Hills has effected in himself over the past few years, and the fact that he now has a job in which he is respected, and that his employer thinks enough of him both to have provided a testimonial to the learned District Court Judge and to appear at the hearing of the appeal today with Ms Pearce. But at the

end of the day what Mr Hills must demonstrate on the hearing of an appeal such as this, is that the sentence imposed was excessive.

Mr Hoskin, counsel for Mr Hills, advanced everything that could be advanced on Mr Hills' behalf and pressed the Court to consider suspending the inevitable sentence of imprisonment and imposing a period of periodic detention on the appellant. This Court finds itself unable to do that. Mr Hills has essentially disqualified himself from that kind of leniency. His employment and personal circumstances are matters which should have dissuaded him from driving on the two occasions in question.

Nor could it be said that the sentence of nine months' imprisonment on each of these convictions is excessive. As recently as yesterday in the case of *Cope v The Police* (AP297/97), an appeal against two years and three months' imprisonment on eight charges of a person with a situation somewhat similar to Mr Hills, was dismissed. That appellant had some 17 previous convictions for driving whilst disqualified and nine previous convictions for driving with excess breath alcohol, and a number of other convictions for flouting Court orders. In the course of that judgment the Court considered earlier authorities where appeals were dismissed against imprisonment for two years and for eighteen months on persons whose record was comparable with Mr Hills. It also considered the recent Court of Appeal decision in *Butterworth v R* (CA100/97, 23 July 1997) where the Court dismissed an appeal against a sentence of 18 months' imprisonment, imposed on an appellant, again with a history not too dissimilar from that disclosed by Mr Hills' list.

In all those circumstances, despite the unfortunate consequence for Ms Pearce and the children, and for Mr Hills' job, the Court is quite unable to conclude that the sentence of nine months' imprisonment or that the disqualification were excessive and the appeal is accordingly dismissed.

A handwritten signature in cursive script, appearing to read 'Williams J.', written in black ink. The signature is fluid and somewhat stylized, with a large initial 'W'.

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WILLIAMS J.

17 December 1997