

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

A NO 86/99

BETWEEN ASHLEY CLYDE HUME

Appellant

AND THE POLICE

Respondent

Date: 20 May 1999

Counsel: Mr D Ruth for the Appellant  
Mr C Ruane for the Respondent

NOT  
RECOMMENDED

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ORAL JUDGMENT OF YOUNG J

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This is an appeal against a sentence of six months imprisonment imposed in the District Court at Christchurch on a charge of driving while disqualified.

The case has an unfortunate background in terms of the sequence of events.

The appellant committed two offences on the 30 October last year in that he drove while disqualified and this with an excess level of alcohol in his breath – 1231 micrograms of alcohol per litre of breath.

He appeared in the District Court on those charges on 24 November and was remanded on bail until 8 December 1998. It was a condition

of his bail that he not drive and, of course, he was, in any event, still disqualified.

On 2 December he was stopped while driving. The police officer who stopped him did not realise that he was a disqualified driver. So he was allowed to go on his way. He was then on bail for the October offences.

On 8 December 1998 he was to appear on the October charges but did not, in fact, appear.

The information in relation to the December charge of driving while disqualified was laid on 10 December.

As I understand the material which has been put before me, he appeared on all charges on 21 January this year. It appears that he was initially to defend the October charges and, as far as I can tell from the copies of the informations, was remanded until 16 February. For some reason which is not clear, he was remanded to a different date in relation to the December charge of driving while disqualified – that is to 18 February.

A change of plea was then indicated and he came before the court eventually on 2 February for sentence in respect of the two October offences. On that occasion he was sentenced to imprisonment for 18 months.

It was then appreciated by the police that the December charge had been overlooked. Apparently he was interviewed by Detective Sergeant Deasley in Greymouth on 4 February and he agreed to plead

guilty to the December charge on the basis that that charge would be transferred to Christchurch.

After some further procedural difficulties, the appellant appeared before Judge Abbott on 31 March for sentence in respect of the December charge. The judge referred to the history and to a pre-sentence report which had been obtained for the sentencing on 2 February. He then said this:

"I note that you now have 16 previous convictions for driving while disqualified, the present offence therefore being the seventeenth such offence, although three of those previous convictions relate to one day in January 1991 when you apparently drove on three occasions.

In my view, on the basis of the information which is available, if the present charge had been before the Judge at Greymouth on 2 February 1999, the overall sentence imprisonment would have been imprisonment for two years.

On the current charge you are now therefore sentenced to imprisonment for six months, that sentence is cumulative on the sentence of imprisonment for one year and six months which was imposed on the driving while disqualified charge on 2 February 1999.

The appellant in his notice of appeal, which he prepared himself, expresses the view that he has been hard done by because the December charge was not dealt with at the same time as the other charges, that is on 2 February. It is certainly not clear to me why it was overlooked but, in the long run, this point does not much matter if the judge was right in his assessment that the appellant would have received a sentence of two years if all charges had been dealt with together.

Mr Ruth said that two years imprisonment for two offences for driving while disqualified, even for someone with as many previous convictions as the present appellant, is a severe sentence, and he suggested that it is more likely that an overall sentence of 18 months would have been imposed.

Mr Ruane, for the Crown, has referred me to the judgment in *Banks* (unreported, AP21/98, Napier Registry, judgment delivered 20 May 1998, Gendall J). In that case, the judge reviewed sentencing patterns for driving while disqualified. He noted that a sentence of two years imprisonment would be regarded as the maximum likely to be imposed for recidivist driving while disqualified offending. A review of the cases to which he refers and, indeed, his own decision, however, suggests that a sentence of that length is not infrequently imposed for that sort of offending.

Putting myself in the shoes of the sentencing judge as at 2 February, assuming all charges were before the court, the relevant and aggravating features of the cases were: -

First the number of prior convictions;

Secondly, that the October driving while disqualified offence was associated with a breath alcohol offence with a very high level; and

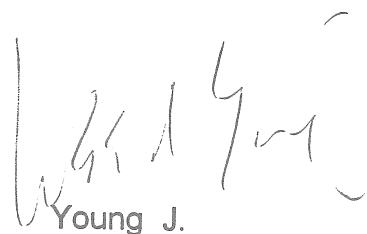
Thirdly, associated with the December offence was the fact that it occurred while the appellant was on bail and, indeed, it occurred in breach of a specific bail condition.

Mr Ruane also noted that in the past the appellant has been sentenced to imprisonment for driving while disqualified and, in

particular, 1994 was sentenced to a term of two years imprisonment on two charges of driving while disqualified and charges of unlawfully taking a motor vehicle and driving with an excess breath alcohol level.

Although I think that this two year sentence overall is a severe sanction it would be very difficult for me to say conscientiously that it lay outside the notional range available to a sentencing judge on 2 February had all offences been before the court. It follows that the sentencing approach adopted by Judge Abbott was open to him as well.

Accordingly, the appeal must be and is dismissed.



Young J.

**Solicitors:**

Layburn Hodgins, Christchurch for the Appellant  
Crown Solicitor's Office, Christchurch for the Respondent