

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

CRI-2008-409-000217

L
Appellant

v

NEW ZEALAND POLICE
Respondent

Hearing: 12 February 2009
Counsel: Appellant In Person
B Hawes for Respondent
Judgment: 12 February 2009

ORAL JUDGMENT OF PANCKHURST J

[1] On 25 October last Mr L was the driver of a vehicle on Harewood Road at about 2.30 am in the morning. He endeavoured to effect a U turn. He was unable to do so and, in the course of the turn, he lost control of his car and collided with a lamp standard which was positioned on a traffic island in the centre of the road. The lamp post collapsed as a result of the accident and fell onto the roadway, but fortunately caused no problem for others, no doubt because of the hour at which the mishap occurred.

[2] In the result Mr L was breathalysed and found to have a reading of 562 micrograms of alcohol per litre of breath. Inevitably he faced charges of driving

with an excess breath alcohol concentration and careless use. To these he entered very prompt pleas of guilty and appeared before Judge Crosbie on 19 November in a traffic list.

[3] The appellant is 21 years of age. He is a student at Canterbury University completing his last year of a degree in market management. Importantly, this was his first offence. The Judge noted this background. He imposed a penalty of a fine of \$1,000, court costs \$130 and disqualification for 12 months. This was in relation to the more serious charge for, in relation to the careless use, the appellant was merely convicted and discharged.

[4] The appeal was advanced with reference to the period of disqualification. Mr L contended that the period was excessive, the more so in his case because of some personal factors. He indicated that he did not have insurance cover in relation to the accident on account of his driving while under the influence. He thinks it likely that he will require to obtain part-time employment in order to meet debts arising from the mishap including, in particular, a debt of \$5,500 to the Christchurch City Council for replacing the pole. In these circumstances his essential submission was that 12 months disqualification was clearly excessive.

[5] As to this, what the Judge said was:

I am going to take your licence from you for longer than the minimum for that reason and impose a fine that is higher than it would usually be.

The reference to “that reason” was to the circumstances of the accident in which the power pole was knocked down.

[6] Mr Hawes, while supporting the penalty imposed as within the available range, drew my attention to a decision in *McEachen v R* (1994) 12 CRNZ 440 (HC), which is a Full Court judgment. Two Judges sat in order to consider sentencing levels for breath alcohol offences involving first offenders and, in particular, to consider an issue which had arisen at that time concerning the existence of local tariffs for such offending. I acknowledge that the judgment is now somewhat dated since the decision was given in October 1994. That said, the case contains a review

of penalties imposed in relation to various first offenders appearing on this charge. In light of those, it does seem to me that the fine imposed was towards the upper end of the range as was the period of disqualification at 12 months. Typically a first offender with a reading of this order might expect to receive the minimum period of disqualification of six months. In my view, accepting that some uplift was appropriate on account of the accident, I nonetheless find it difficult to accept that both a fine of \$1,000 and twice the minimum disqualification, was justified. Indeed I find that the disqualification in particular, against the background the financial penalty (imposed upon a university student), makes the sentence clearly excessive.

[7] I therefore allow the appeal and intervene to the extent that the period of disqualification is reduced from 12 to eight months. Otherwise the sentence, as imposed in the District Court, will stand.