IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

CRI-2009-476-000019

MARK GREGORY KIMBER
Appellant

v

POLICE
Respondent

Hearing: 15 October 2009

Appearances: Q Hix for Appellant
C A O'Connor for Respondent

Judgment: 15 October 2009

ORAL JUDGMENT OF HON. JUSTICE FRENCH

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[1] This is an appeal against sentence.

[2] The appellant was found guilty of a charge under s40 of the Land Transport Act 1998 by breaching r 5.1 of the Land Transport Road User Rules 2004 in that he exceeded a posted speed limit by 64 kilometres per hour on 15 February 2009.

[3] The facts of the offending were that Mr Kimber was riding his motorcycle with a pillion passenger on State Highway 1. During an overtaking manoeuvre he travelled at speeds of up to 164 kilometres per hour. The road conditions were fine and there was good visibility.

[4] Mr Kimber was summonsed to appear in the Timaru District Court in May 2009, but did not appear. The matter was then adjourned to a formal proof hearing before Justices of the Peace.

[5] The Justices were satisfied the elements of the charge were proved beyond reasonable doubt, and fined Mr Kimber $800 plus Court costs of $130. He was disqualified from holding a driver licence for nine months.

[6] On appeal, the focus is on the disqualification component of the sentence. There is no dispute taken with the amount of the fine.

[7] In contending that the period of nine months was manifestly excessive, counsel advances the following arguments.

[8] First, the relatively minor nature of the offence . Counsel points out that Mr Kimber was not charged with dangerous driving, or even with careless use, and that even if he had been charged with dangerous driving, more likely than not he would only have been disqualified for the mandatory minimum period under that offence of six months.

[9] A second ground advanced in written submissions was a lack of relevant previous offending. Mr Kimber last appeared on driving related charges in 1992. It was suggested the offending could well be classified as a one-off offence.

[10] Thirdly, it was submitted that the monetary penalty was at the upper end of the scale, and although no dispute is taken with the amount of the fine per se, the submission is that in combination with the period of disqualification it renders the sentence manifestly excessive.

[11] There is no doubt the Justices did have jurisdiction to impose a period of the length of nine months. Section 80 of the Land Transport Act provides:

> **80 General penalty of disqualification may be imposed if offence involves road safety**
>
> (1) If a person is convicted of an offence against this Act, and the court is satisfied that the offence relates to road safety, the court may order that the person be disqualified from holding or obtaining a driver licence for such period as the court thinks fit.
>
> (2) The power conferred by subsection (1) is in addition to, and does not limit, any other powers of the court.

[12] There is also no question, in my view, that this offence related to road safety. The offence consisted of travelling on State Highway 1 at a speed, as I have said, of 164 kilometres per hour with a pillion passenger on board. The speed was grossly excessive.

[13] The problem I face is that unfortunately, in disqualifying the appellant from holding a licence for nine months, the Justices have not actually articulated any reasons for that decision. Accordingly, although this is an appeal against the exercise of a discretion, in the absence of any reasons, an appellate Court is obliged to look at the matter afresh.

[14] Looking at the matter afresh, I have had regard to Mr Kimber's demerit point and licence suspension history. It shows he has a very poor driving record indeed, with several speeding offences and the like, not only in the 1990s but also in this decade including 2008. Mr Hix, who did not prepare the written submissions, acknowledged that this history report puts a different complexion on matters and undermines the submission that this was just a one-off offence.

[15] On the other hand, Mr Hix strongly submitted that this appellant has not been charged with dangerous driving and it seems wrong in principle that he should be subjected to a longer period of disqualification than was likely to have been imposed had he been charged with the more serious offence.

[16] There is force in that submission, and accordingly, having regard to all the circumstances, I have decided that the appeal should be allowed. The period of disqualification of nine months is quashed and replaced with a period of disqualification of six months.

[17] The remainder of the sentence stands.

Solicitors:
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