IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

CRI 2009-419-000023

	BETWEEN	BARRY RAYMOND WHITELAW Appellant
	AND	NEW ZEALAND POLICE Respondent

Hearing: 22 April 2009

Appearances: Appellant in person
Ann-Marie Beveridge for Respondent

Judgment: 22 April 2009

JUDGMENT OF HARRISON J

SOLICITORS
Almao Douch (Hamilton) for Respondent
(copy to Appellant in person)

[1] Mr Harry Whitelaw appeals against his conviction in the District Court at Hamilton on 17 December 2008 on one charge of driving while disqualified and the sentence of three months disqualification imposed on 29 January 2009.

[2] Mr Whitelaw's notice of appeal is brief. He says now that it sets out the essential grounds of his argument. He has failed to comply with the statutory requirements to file a full written synopsis or outline of his argument: see Practice Note No.11 issued by the Chief Justice on 19 December 2003.

[3] The appeal was originally scheduled for hearing in this Court on 27 March 2009. Mr Whitelaw sought an adjournment on the grounds that his sister-in-law was terminally ill and had been admitted to hospital in Christchurch. Wylie J granted an adjournment and the appeal was scheduled for hearing at 10 am on 7 April 2009.

[4] The hearing did not proceed on 7 April because of Mr Whitelaw's own unavailability. He was hospitalised at the time. A further fixture was allocated for 11.45 am today.

[5] Mr Whitelaw is now in police custody. He has been arrested on unrelated charges. He has sought a further adjournment on the ground that he is not in a position to argue his appeal. He says that he requires access to other documents.

[6] I dismissed Mr Whitelaw's application. This appeal has been adjourned twice before. It follows a series of extraordinary adjournments of the criminal proceeding in the District Court. Indeed, Mr Whitelaw relies primarily on the grounds of delay in hearing the charge in that forum to support this appeal. I am satisfied that Mr Whitelaw is in a position to advance oral argument on the grounds raised in his notice. He is very familiar with them and the Court process, having argued them before in the District Court and elsewhere: see *R v Whitelaw* [2008] NZCA 307. Also, Ms Beveridge has provided him with a copy of the Crown's synopsis of submissions in opposition.

[7] The first and primary ground raised by Mr Whitelaw is what he describes as "systemic delay of 2½ years with more than 30 appearances" in the District Court on

the charge of driving while disqualified which was finally determined by Judge Cadenhead at a hearing on 29 September 2008.

[8] Judge Cadenhead set out a full chronological history of the proceeding following Mr Whitelaw's first appearance in the District Court at Hamilton on one charge of driving while disqualified on 29 June 2006. There were, on Judge Cadenhead's analysis, 21 appearances up until 29 September 2008. It is unnecessary for me to traverse the reasons for those adjournments other than to observe that a number of them were at Mr Whitelaw's request. On 18 January 2008 Judge Wolff dismissed Mr Whitelaw's application to dismiss the charge due to undue delay. Judge Hole reached a similar decision on a further application by Mr Whitelaw on 26 February 2008. Finally, Judge Cadenhead himself dismissed such an application by Mr Whitelaw on 29 September 2008.

[9] It is of significance that Judge Cadenhead carefully analysed the relevant principles relating to delay in their factual context. He was satisfied that there was no prejudice suffered by Mr Whitelaw as a result. Ms Beveridge for the Crown submits that there is no jurisdiction on appeal to interfere with Judge Cadenhead's discretionary conclusion. Even if there was, I am not satisfied that the Judge erred in any respect. Mr Whitelaw himself has not identified any material prejudice other than to observe that if he had been able to enter a plea of guilty at an earlier date he would probably have been convicted and discharged without imposition of a sentence of disqualification. That is not prejudice in the sense of a disadvantage suffered by him in defending the substantive charge.

[10] In fact, Judge Cadenhead records Mr Whitelaw's admission at the hearing that he drove his vehicle while he was disqualified. His substantive defence was that he acted in an emergency situation. Judge Cadenhead, following authority in this Court, rejected that defence in the absence of formal evidence in support. His conclusion was corroborated by evidence which he accepted from the arresting officer that when apprehended Mr Whitelaw gave a very different explanation for his driving from that tendered at trial.

[11] Mr Whitelaw's second ground of appeal is to the effect that Judge Cadenhead advised him that he would have convicted and discharged him without disqualification if he had pleaded guilty earlier. This is simply a variation on the ground already discussed. It is not a discrete ground of appeal in itself. It was, as Ms Beveridge submits, open to Mr Whitelaw to enter a plea of guilty at any time after the charge was laid; the existence of his appeal to the Court of Appeal following an earlier conviction for the same offence was no bar: *R v Whitelaw* [2008] NZCA 307. Moreover, even if the Judge gave such advice (and there is no official record to that effect), it is irrelevant.

[12] Mr Whitelaw's third ground is that that the Judge agreed there were special circumstances but failed to impose a sentence which reflected them. This ground proceeds on a misunderstanding of the decision. As Ms Beveridge submits, any special reasons must relate to the circumstances of the offence, which the Judge rejected, not sentence: s 81 Land Transport Act 1998. Arguably, the Judge erred in Mr Whitelaw's favour in imposing a sentence of three months disqualification commencing on 28 February.

[13] Accordingly Mr Whitelaw's appeal against conviction and sentence is dismissed.

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Rhys Harrison J