Carcuro v Norris [2007] NTSC 18

PARTIES:	CARCURO, EZRICK
	v
	NORRIS, STEVEN PAUL
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	JA 57 of 2006 (20625822)
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JUDGMENT OF:	SOUTHWOOD J

CATCHWORDS:

YOUTH JUSTICE ACT – Appeal against sentence for drive while disqualified – youth – sentencing principles – weight to be given to rehabilitation and deterrence – appeal allowed

Traffic Act s 31(1); Youth Justice Act s 4, s 81, s 144

Dinsdale v The Queen (1999) 202 CLR 321; *M v Waldron* (1988) 56 NTR 1; 90 FLR 355; *Nelson v Chute* (1994) 72 A Crim R 85; *P (a minor) v Hill* (1992) 110 FLR 42; *Simmonds v Hill* (1986) 38 NTR 31; *Wood v Samuels* (1974) 8 SASR 465; *Yovanovic v Pryce* (1985) 33 NTR 24 - applied

Arnold v Trenerry (1997) 118 NTR 1; *Police v Cadd* (1997) 94 A Crim R 466; *Eldridge v Bates* (1989) 8 MVR 394; *Hales v Garbe* [2000] NTSC 49;

Oldfield v Chute (1992) 107 FLR 413; *Ross v Toohey* [2006] NTSC 92; *Seears v McNulty* (1987) 89 FLR 154; *Smith v Torney* (1984) 29 NTR 31 - cited

Lynch v Dixon (2004) 148 A Crim R 472; *Stanischewski v Trenerry* [2001] NTSC 50 - distinguished

REPRESENTATION:

Counsel:

Appellant:	J Payten
Respondent:	H Roberts

Solicitors:

Appellant:	North Australian Aboriginal Justice Agency
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Carcuro v Norris [2007] NTSC 18
No JA 57 of 2006 (20625822)

IN THE MATTER OF the *Youth Justice Act*

AND IN THE MATTER OF an appeal against sentence handed down in the Youth Justice Court at Darwin

BETWEEN:

CARCURO, EZRICK
Appellant:

AND:

NORRIS, STEVEN PAUL
Respondent:

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 17 March 2007)

Introduction

[1] On 5 December 2006 the appellant was convicted and sentenced by the Youth Justice Court for three traffic offences that were committed by the appellant on 11 October 2006. For the charge of driving while disqualified contrary to s 31(1) of the Traffic Act the appellant was sentenced to seven days imprisonment. The sentence of imprisonment was suspended immediately upon the appellant entering a bond, on his own security of $400, to be of good behaviour for a period of twelve months. In addition,

the appellant was disqualified from driving for a period of nine months from 5 December 2006. For the offence of driving an unregistered motor vehicle contrary to s 33(1) of the Traffic Act the appellant was fined $150 and ordered to pay a victim's levy of $20.00. For the offence of driving an uninsured motor vehicle contrary to s 34(1) of the Traffic Act the appellant was fined $1000 and ordered to pay a victim's levy of $20.00.

[2] Under s 144 of the Youth Justice Act, the appellant appeals against the sentence of imprisonment that was passed by the Youth Justice Court for the offence of driving while disqualified on 11 October 2006. The grounds of appeal are:

1. The sentence passed by the Youth Justice Court on 5 December 2006 for the offence of driving while disqualified contrary to s 31(1) of the Traffic Act was manifestly excessive.

2. The sentencing magistrate failed to have regard to the sentencing principle that imprisonment is an option of last resort.

Facts

[3] A statement of admitted facts was read by the police prosecutor during the sentencing proceeding in the Youth Justice Court. The admitted facts are as follows.

[4] On 11 October 2006 the appellant drove his blue Ford sedan, New South Wales registration XFL 639, west on the Victoria Highway in the town of

Katherine. Police officers observed that the Ford sedan had no tail lights. The appellant was stopped and spoken to by police. The appellant was asked if he knew that he had no tail lights, and he said, "Yes, I've got the fuses here to change them." The appellant was also asked if he had a current driver's licence in the Northern Territory. There was no answer. Further enquiries made by the police officers who stopped the appellant showed that he was disqualified from driving for a period of six months from 20 June 2006 and that the registration of the Ford sedan expired on 24 February 2005.

[5] The appellant was formally cautioned and asked the following questions. Why was he driving while being disqualified from doing so? He said, "So I can go fishing and do some work." When he was asked why he was driving unregistered and uninsured, he said, "I gave you a good enough reason – to go and get some work."

[6] The appellant was later charged and bailed. At the time of the offence the Victoria Highway was a public street open to and used by the public. It was night time and traffic was minimal.

[7] Counsel who appeared for the offender in the sentencing proceeding in the Youth Justice Court stated that the circumstances of the appellant's offending on 11 October 2006 were as follows. The appellant and a number of his friends had travelled from Darwin to Katherine in the Ford sedan. The Ford sedan had been driven to Katherine by Ryan Redgrove. They were

following the mango picking season and were looking for work picking mangoes. On the evening of 11 October 2006 the appellant's friends drunk some beer and they became intoxicated. The appellant did not drink any beer. Since being dealt with by the Youth Justice Court on 20 June 2006 the appellant has greatly reduced his intake of alcohol. After they finished drinking beer his friends decided that they wanted to go fishing and they asked him to drive them to a place where they could fish. Initially the appellant refused to do so. The appellant's friends then said that if he did not drive them they would drive the Ford sedan themselves. As he believed that there may be a motor vehicle accident if one of his friends drove the appellant relented and he drove.

[8] The appellant was born on 14 December 1998. He was 17 years of age at the time he committed the traffic offence that is the subject of this appeal. The maximum penalty for drive while disqualified contrary to s 31(1) of the Traffic Act is imprisonment for 12 months. On 20 June 2006 the appellant was convicted of six traffic offences that he committed on 24 May 2006 namely, driving an unregistered motor vehicle, driving without due care, driving with a blood alcohol content of .125 per cent, driving a motor vehicle while unlicensed, driving an uninsured motor vehicle and driving an unregistered motor vehicle. He was fined a total of $690 and he was disqualified from driving for a period of six months from 20 June 2006. The appellant has no other prior convictions for traffic offences.

The Magistrate's sentencing remarks

[9] The presiding magistrate made the following remarks when she passed sentence on the appellant:

> You have pleaded guilty to three matters under the Traffic Act: driving whilst disqualified; driving unregistered; and driving uninsured. You have previous convictions for the similar traffic offences. The penalties for these offences are very steep financial penalties, and in relation to the offence of drive while disqualified, as no doubt Mr Lenn would have told you, it is quite common for adults who are convicted of the offence of drive while disqualified to be sentenced to an actual period of imprisonment. It is regarded as a particularly serious offence because it is a breach of an order of the court that you not drive during the particular period. It is not, however, an automatic outcome that a person who is convicted of that offence is to be sentenced to a term of imprisonment that is to be actually served. In particular I need to take into account the fact that you are still quite a young man before the jurisdiction of the Youth Justice Court, not before the jurisdiction of an adult court, and so I am taking that into account in setting a penalty.
>
> I have taken into account the circumstances of the offence, that you rather conditionally made a decision which you no doubt at the time thought was in the best interests of your mates, that you drive the [Ford sedan] rather than them as they had consumed a lot of alcohol. An alternative course could have been just taking the keys and departing, and that way none of you would have been in trouble.
>
> You have to take the responsibility for your actions, but I accept that it is somewhat to your credit that you were not drinking with the others and that you appear to be trying to get yourself back on track, and so, although I have to impose a fairly steep financial penalty on you, because there is a minimum penalty for a second offence of driving an uninsured motor vehicle, I am not going to sentence you to an actual period of imprisonment. I will pass a sentence that suspends the period of imprisonment. So the sentences I am imposing are these: on the charge of drive while disqualified, you will be convicted and sentenced to seven days imprisonment, but that sentence is to be suspended immediately upon you entering a bond, on your own security of $400, to be of good behaviour for a period of twelve months; on the drive unregistered charge you will be convicted and fined $150 plus a $20 victim's levy; on the drive

> uninsured charge, you are convicted and fined $1000 plus a $20 victim's levy. On the conviction of drive disqualified, I may also give you a disqualification and I think that it is appropriate that I do impose a further period of disqualification. You will be disqualified from driving for a period of nine months from today's date.
>
> Now, be warned, do not get in a motor car and drive, because the outcome will be quite different if you were to be before the court again.

[10] There was no evidence before the Youth Justice Court that the offence of driving while disqualified was prevalent amongst youths. The police prosecutor told the Youth Justice Court that the offence was almost non-existent amongst youths. Nor was there any evidence before the Youth Justice Court that the appellant had breached any previous court orders that he had been subjected to. The respondent conceded before this court that the appellant had fully complied with a good behaviour bond of 15 months that was imposed on him by the Juvenile Court on 28 September 2004.

The argument of the appellant

[11] Counsel for the appellant argued that when passing sentence on the appellant the sentencing magistrate erred in the approach that she adopted. The sentencing magistrate had regard to the guideline that imprisonment was the general or usual sanction for the offence of driving while disqualified; commenced the sentencing exercise with imprisonment as the starting point; recognized that there was no automatic rule requiring that there be a sentence of actual imprisonment; and accordingly suspended the sentence of imprisonment that she imposed on account of the appellant's age,

antecedents and subjective circumstances, the circumstances of the offence and the nature of her jurisdiction. In adopting such an approach the sentencing magistrate proceeded on a mistaken apprehension that imprisonment is the starting point when sentencing a youth for such an offence. The regime for sentencing youths places the objective of rehabilitation at the forefront. While there are categories of offences committed by youths where it will be necessary, in order to protect the community, for the sentencing court to give considerations of deterrence and retribution greater weight, this was not such a case. Absent persistent offending, there was no requirement for specific deterrence to be promoted. The offence of driving while disqualified is not one which requires the youth sentencing regime to be varied. By commencing with imprisonment as the starting point, the sentencing magistrate gave too much weight to deterrence at the expense of the other objectives of sentencing a youth and she failed to properly take into account the strong mitigating factors presented by the appellant.

[12] The correct approach required the sentencing magistrate to be satisfied that no sentence other than a term of imprisonment is appropriate in the circumstances of the particular case. While the sentencing magistrate was required to have regard to deterrence, it was incumbent on the sentencing magistrate to impose a sentence which gave effect to the principles governing the sentencing of youths, in particular the overwhelming concern is the rehabilitation of the young offender as a law abiding citizen. Before

imposing a particular sentence on a youth for the offence of driving while disqualified the sentencing court must ask itself whether it is necessary to go beyond a lesser sentencing option. The guidelines provided by the authorities about sentencing adults for the offence of driving while disqualified are not in the nature of rules which must be rigorously applied nor are exceptional circumstances required before sentencing options other than a term of imprisonment may be considered by a sentencing court.

The argument of the respondent

[13] Counsel for the respondent submitted that the appellant had not demonstrated that the sentencing magistrate had erred as a matter of proper sentencing principle in the approach that she adopted or on the face of the sentence. The primary considerations of the sentencing magistrate were the sentencing principles enunciated in the decisions of this court in *Ross v Toohey* [2006] NTSC 92, *Lynch v Dixon* (2004) 148 A Crim R 472 at par [32] and par [48], *Stanischewski v Trenerry* [2001] NTSC 50 and *Hales v Garbe* [2000] NTSC 49 at par [13] and the age of the respondent. The sentencing magistrate imposed a sentence which took into account the appellant's age and maturity, his recent previous offending, and the seriousness with which courts regard the offence of driving while disqualified, while giving him the benefit of a sentence which allows him to continue to live in his home and community and pursue the training and work opportunities he expressed an interest in pursuing.

Conclusion

[14] I accept the arguments of the appellant. The sentence imposed on the appellant for the offence of driving while disqualified was obviously excessive and plainly unjust. A sentence to a term of imprisonment was not called for. The sentencing magistrate gave too much weight to the object of deterrence in circumstances where it was not established that such offending was prevalent among youths; the appellant's driving was not dangerous; his offending by driving while disqualified was not persistent; it was the first such offence committed by the appellant; he had previously complied with other court orders that had been imposed on him; it was not established that the appellant had been warned by the Youth Justice Court when he was sentenced on 20 June 2006 that he was liable to be sentenced to a term of imprisonment if he drove a motor vehicle while he was disqualified from driving; he had successfully completed two thirds of the period of his disqualification from driving a motor vehicle; he had changed his behaviour in that he had significantly reduced his consumption of alcohol since 20 June 2006; he did not drink any alcohol prior to driving on 11 October 2006; he was a youth who was under considerable peer pressure to drive the motor vehicle; the circumstances of the offending did not evince a complete and utter disregard of the order disqualifying the appellant from driving; the appellant's driving was conditional and the appellant's culpability was diminished by his age and the peer pressure that he was under at the time of his offending. At no stage did the respondent challenge the explanation

given by the appellant for driving while he was disqualified from driving. In the circumstances it could not be said that lesser sentencing options were excluded. The sentencing magistrate failed to give due consideration to other sentencing options.

[15] A suspended sentence of imprisonment should not be imposed unless the sentencing judge determines that a sentence of imprisonment, and not some lesser sentence, is called for: *Dinsdale v The Queen* (1999) 202 CLR 321 at par 79 per Kirby J. As Walters J said in *Wood v Samuels* (1974) 8 SASR 465 at 468 in an oft quoted passage:

> Speaking for myself, I would think that a suspended sentence is imposed only when by eliminating all other alternatives, the Court thinks the case is one for imprisonment, and, though it be a case for imprisonment, an immediate custodial sentence is not required in the circumstances of the particular case.

[16] The facts of the present case are distinguishable from the facts of the offending which were considered by this court in *Lynch v Dixon* (supra) and *Stanischewski v Trenerry* (supra) where, respectively, a fully suspended sentence of two months imprisonment was imposed on the offender on appeal by the Supreme Court and a sentence to be imprisoned for four months was upheld by the Supreme Court. The offending in those cases was more serious than the offending in this case and was persistent. In *Lynch v Dixon* (supra) the offender was disqualified from driving for six months on 11 March 2004 and he drove while disqualified on two occasions. The first occasion he drove while disqualified was on 12 March 2004 which was the

day after he was disqualified from driving. The second occasion he drove while disqualified was on 29 April 2004 which was less than two months after his disqualification from driving. On 11 March 2004 the offender was warned by the Juvenile Court that if he was caught driving during the period of his disqualification he would be back in court charged with a serious offence "which could have some big consequences for him." The offender had a blood alcohol reading of .158 percent when he drove the motor vehicle on 12 March 2004, he drove erratically and when stopped by police he got out of the motor vehicle and he ran away.

[17] The facts of the offending in *Stanischewski v Trenerry* (supra) were as follows. Although still young, the offender was an adult. He was 19 years of age. On 23 August 1994 the appellant had been convicted of driving while having a blood alcohol content of .089 and he was disqualified from holding a driver's licence for six months. On 27 July 1995 the appellant was convicted for driving while disqualified and he was disqualified from driving for 12 months. On 13 June 1996 while disqualified from driving the appellant drove a motor vehicle in East Point Reserve. At the time he committed the offence the appellant was also serving a suspended sentence of imprisonment. In his Reasons for Decision in *Stanischewski v Trenerry* (supra) Martin (BR) CJ stated at par [23] that "the need for deterrence arises from the fact that this was the appellant's second offence of this type, and that he failed to turn up to be dealt with as required. They are factors which

outweigh the considerations which might prevail in considering an appropriate sentence for a young offender."

[18] The sentencing guidelines enunciated in cases such as *Ross v Toohey* (supra), *Lynch v Dixon* (supra), *Stanischewski v Trenerry* (supra), *Hales v Garbe* (supra), *Arnold v Trenerry* (1997) 118 NTR 1, *Police v Cadd* (1997) 94 A Crim R 466, *Oldfield v Chute* (1992) 107 FLR 413, *Eldridge v Bates* (1989) 8 MVR 394, *Seears v McNulty* (1987) 89 FLR 154 at 164, *Smith v Torney* (1984) 29 NTR 31 at 36 do not exclude the sentencing principles applicable to youth offenders. While deterrence is not an irrelevant consideration when sentencing a youth for driving while disqualified, there is no need to give deterrence special prominence in all such cases involving youth offenders. The principles applicable to sentencing youths remain the primary sentencing considerations when sentencing a youth offender for driving while disqualified: *Lynch v Dixon* (supra) at par [49]. The overwhelming concern of a court when sentencing youths is the young offender's development as a law abiding citizen. The court should be at pains to ensure that its sentences do not alienate young offenders. Retribution and deterrence are of secondary importance. Before imposing a particular sentence on a youth a court must ask itself if it is necessary to go beyond the lesser options: *Simmonds v Hill* (1986) 38 NTR 31 at 33 by Maurice J and applied in *Nelson v Chute* (1994) 72 A Crim R 85; *P (a minor) v Hill* (1992) 110 FLR 42; *M v Waldron* (1988) 56 NTR 1; 90 FLR 355; and *Yovanovic v Pryce* (1985) 33 NTR 24.

[19] In *M v Waldron* (supra) at 360, Kearney J said:

> Mr Dowd referred me to the leading case of *Hallam v O'Dea* (1979) 22 SASR 133, which makes it clear that the principles on which a Juvenile Court should select the most appropriate penalty are fundamentally different from those applied in a Court of Summary Jurisdiction. As was pointed out in *R v Homer* (1976) 13 SASR 377 at 382–383: ' … in the case of a juvenile … the Court is trying to find out what is the best means of turning this delinquent juvenile into a responsible law-abiding adult and that has really got nothing to do with the seriousness of the crime … and no useful comparison can be made between an order made under a non-punitive system and a sentence imposed on an adult.'
>
> In its difficult task of deciding upon the appropriate disposition I consider that the Juvenile Court should always bear in mind the need to preserve and strengthen the juvenile's relationship with his family (and that it is generally desirable that he remain in his own home) as well as the need to bring home to him a clear understanding that he is required to observe the law. He should be kept in the community wherever that is practicable, if the need to protect the community from him does not require his removal from it.

[20] In *P (a minor) v Hill* (supra) at 47–48 Mildren J said:

> The approach of the courts when dealing with juveniles must be cautious, patient and caring, with the interests of the juvenile foremost in mind. Of course, there are some offences which warrant an immediate custodial sentence notwithstanding that the offender is a juvenile and notwithstanding, even, that the juvenile has no prior convictions. But these are for extremely serious crimes, usually, but not always, crimes of violence where it is right that the need to punish and deter is given particular emphasis: see *R v Williams* (1992) 109 FLR 1 at 7. I do not say, of course, that in the case of a persistent offender, where the crimes are not in the extremely serious category, that is not appropriate to order detention or imprisonment. But even in such cases, detention or imprisonment should only be used as a last resort, where all other options are inappropriate and the need for deterrence and to protect the community must be given special prominence: see, eg, *Yovanovic v Pryce* (1985) 33 NTR 24.

[21] The rationale for the sentencing principles applicable to youths is that "[youths] are less mature – less able to form moral judgments, less capable of controlling impulses, less aware of the consequences of acts, [more subject to peer pressure], in short they are less responsible and less blameworthy, than adults. Their diminished responsibility means that they 'deserve' a lesser punishment than an adult who commits the same [offence]," Judge Newman, *South Australia, Children's Court Advisory Committee, Annual Report 1983* at 6-7, quoted in Fox and Freiberg, *Sentencing* (2nd ed) at p 827.

[22] The above principles have been incorporated into the Youth Justice Act. Section 4 of the Youth Justice Act provides as follows:

> 4. Principles
>
> The following are general principles that must be taken into account in the administration of this Act:
>
> (a) if a youth commits an offence, he or she must be held accountable and encouraged to accept responsibility for the behaviour;
>
> (b) the youth should be dealt with in a way that acknowledges his or her needs and will provide him or her with the opportunity to develop in socially responsible ways;
>
> (c) a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time;
>
> (d) a youth must be dealt with in the criminal law system in a manner consistent with his or her age and maturity and

have the same rights and protection before the law as would an adult in similar circumstances;

(e) a youth should be made aware of his or her obligations under the law and of the consequences of contravening the law;

(f) a youth who commits an offence should be dealt with in a way that allows him or her to be re-integrated into the community;

(g) a balanced approach must be taken between the needs of the youth, the rights of any victim of the youth's offence and the interests of the community;

(h) family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened;

(i) a youth should not be withdrawn unnecessarily from his or her family environment and there should be no unnecessary interruption of a youth's education or employment;

(j) a youth's sense of racial, ethnic or cultural identity should be acknowledged and he or she should have the opportunity to maintain it;

(k) a victim of an offence committed by a youth should be given the opportunity to participate in the process of dealing with the youth for the offence;

(l) a responsible adult in respect of a youth should be encouraged to fulfil his or her responsibility for the care and supervision of the youth;

(m) a decision affecting a youth should, as far as practicable, be made and implemented within a time frame appropriate to the youth's sense of time;

(n) punishment of a youth must be designed to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;

(o) if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community;

(p) programs and services established under this Act for youth should –

(i) be culturally appropriate; and

(ii) promote their health and self-respect; and

(iii) foster their sense of responsibility; and

(iv) encourage attitudes and the development of skills that will help them to develop their potential as members of society;

(q) unless the public interest requires otherwise, criminal proceedings should not be instituted or continued against a youth if there are alternative means of dealing with the matter;

(r) as far as practicable, proceedings in relation to youth offenders must be conducted separately from proceedings in relation to adult offenders.

[23] Section 81 of the Youth Justice Act provides as follows:

81. Principles and considerations to be applied to youth offenders

(1) When sentencing a youth who has been found guilty of an offence, the Court must have regard to –

(a) the principles applying generally for disposing of charges of offences, except as those principles are modified by this Act; and

(b) the general principles of youth justice set out in section 4.

(2) The Court must consider any information about the youth or the offence that may assist the Court to decide how to dispose of the matter, and in particular must consider –

(a) the nature and seriousness of the offence; and

(b) any history of offences previously committed by the youth; and

(c) the youth's cultural background; and

(d) the age and maturity of the youth; and

(e) any previous order in relation to an offence that still applies to the youth, and any further order that is liable to be imposed if the youth has not complied with the terms of the previous order; and

(f) the extent to which any person was affected as a victim of the offence.

(3) The Court must dispose of the matter in a way that is in proportion to the seriousness of the offence.

(4) The Court must have regard to the fact that the rehabilitation of a youth may be facilitated by –

(a) the participation of the youth's family; and

(b) giving the youth opportunities to engage in educational programs and in employment,

but the absence of such participation or opportunities must not result in the youth being dealt with more severely for the offence.

(5) The Court must take into account whether the youth has taken steps to make amends with any of the victims of the offence.

(6) The Court must impose a sentence of detention or imprisonment on a youth only as a last resort, and a sentence of imprisonment only if there is no appropriate alternative.

[24] The principles applicable to sentencing youths do not exclude considerable weight being given to deterrence in an appropriate case. Deterrence is relevant to sentencing adults for the offence of driving while disqualified because the offending frequently involves a deliberate defiance of the law exemplified through orders of the courts and puts at nought orders made primarily for the protection of the public, that is, to keep people off the roads who, by their offending, have demonstrated that they are not to be trusted with a licence to drive a motor vehicle: *Stanischewski v Trenerry* (supra) at par [22] per Martin (BR) CJ. Likewise there is a need for youth offenders to have a clear understanding that they are required to observe the orders of the courts. However, a sentence to a term of imprisonment for the offence of driving while disqualified should only be imposed on a youth offender where the need for deterrence and to protect the community must be given special prominence because of the circumstances of the particular case, for example, where there is persistent offending, or the offence is particularly contumacious and evinces a clear intention not to comply with

the order of the court, and only then when it is clear that the offender has come to the end of the road so far as non-custodial penalties are concerned.

[25] I accept the submissions of counsel for the appellant that even in the case of an adult offender where the usual sentencing disposition for driving while disqualified may be a sentence to a term of imprisonment, the authorities referred to in par [13] and par [18] above have emphasized that the sentencing discretion is not circumscribed; each case must be treated on its merits according to the individual offender's circumstances, and not on the basis that the offender belongs to a class of offenders; circumstances may exist which justify a non-custodial sentence including the age of the offender, the character of the offender, the circumstances of the offence and the amount of the disqualification period that has already elapsed; there is no need to find exceptional circumstances before a sentence less than a term of imprisonment is imposed; and a sentencing court should consider all the various factors before deciding that a term of imprisonment should be imposed on an offender who drives while disqualified.

Orders

[26] The appeal against sentence must succeed. I make the following orders:

1. The appellant's appeal against sentence for the offence of driving while disqualified on 11 October 2006 contrary to s 31(1) of the Traffic Act is allowed.

2. The sentence of a term of seven days imprisonment that was imposed on the appellant by the Youth Justice Court on 5 December 2006 for the offence of driving while disqualified on 11 October 2006 contrary to s 31(1) of the Traffic Act is set aside.

3. The appellant's conviction by the Youth Justice Court on 5 December 2006 for the offence of driving while disqualified on 11 October 2006 contrary to s 31(1) of the Traffic Act is confirmed.

4. For the time being the appellant's disqualification from driving remains in force.

[27] The appellant is to be re-sentenced. Before re-sentencing the appellant I will hear the parties further. I will also hear the parties as to costs.
