



THE COURT OF APPEAL

Court of Appeal Record No. 68/2022
Neutral Citation No: [2022] IECA 302

Birmingham P
McCarthy J
Kennedy J

IN THE MATTER OF:

THE DIRECTOR OF PUBLIC PROSECUTIONS

PROSECUTOR

-AND-

COLLEEN MCCANN

ACCUSED

AND IN THE MATTER OF:

SECTION 16 OF THE COURTS OF JUSTICE ACT, 1947

AND IN THE MATTER OF:

ORDER 86(b) OF THE RULES OF THE SUPERIOR COURTS.

CASE STATED TO THE COURT OF APPEAL

JUDGMENT of the Court delivered by Mr Justice McCarthy on the 21st day of December 2022

1. The accused pleaded guilty to the offence of careless driving causing death contrary to Section 52 of the Road Traffic Act 1961 as amended. Thereafter, a sentence of twelve

months imprisonment was imposed, suspended on given terms. When adjudicating on the question of sentence the issue of whether or not a “*consequential disqualification order*” from driving arose.

2. As a consequence of the fact that this issue is pending before him, His Honour Judge Aylmer SC sitting in the Circuit Court in County Monaghan stated a case for the opinion of this Court on two issues, namely: -

- (1) *Whether or not the accused, upon conviction for the offence of careless driving causing death tried upon indictment, contrary to s. 52(1) and (2)(a) of the Road Traffic Act, 1961 as substituted by s. 4 of the Road Traffic (No. 2) Act, 2011 is liable to a mandatory disqualification from holding any driving licence whatsoever for not less than four years in the case of a first offence and not less than six years in the case of a second or subsequent offence under the same section.*
- (2) *Whether or not, in the interpretation of s. 26(3)(a) of the Road Traffic Act, 1961 as substituted by s. 65(1) of the Road Traffic Act, 2010, due to the special circumstances referred to in that section, the court may excuse for a specified reason the [Accused] from having to produce a certificate of competency and/or a certificate of fitness when seeking to hold a driving licence to the appropriate licencing authority or does the court have a general power to reduce for special reason the period of disqualification pursuant to the section.*

3. There is pending before us, heard on the same occasion as the present case, an appeal against sentence where the same or similar issues arise and we give judgment separately therein.

4. The question of *whether or not* a consequential disqualification order arises in the event of a conviction for such offence is addressed in section 26(1) of the Act. That subsection is as follows: -

“(1) Subject to subsection (5)(b) [not relevant], where a person is convicted of an offence specified in the Second Schedule, the court shall make an order (‘consequential disqualification order’) declaring him or her to be disqualified for holding a driving licence.”

5. The *nature* of a consequential disqualification order can be seen at section 26(3)(a) which is as follows: -

“(3) A consequential disqualification order resulting from a conviction for an offence under—

(a) section 52 or 53 tried on indictment where the contravention involved the driving of a mechanically propelled vehicle, or

...

operates to disqualify the person to whom the order relates for holding any driving licence whatsoever during a specified period and, unless the court is satisfied that a special reason (which it shall specify when making its order) had been proved by the convicted person to exist in his or her particular case such that it should not so operate, thereafter until the person has produced to the licensing authority, as may be specified in the order, a certificate of competency or both a certificate of competency and a certificate of fitness.”

6. The *period* of disqualification is dealt with by section 26(4)(a) which is as follows: -

“(4)(a) The period of disqualification specified in a consequential disqualification order shall, where the person to whom the order relates is convicted of an offence under—

...

...

(iii) section 52 or 53, tried on indictment,

...

...

...

be not less than 4 years in the case of a first offence under the section concerned and not less than 6 years in the case of a second or any subsequent offence under the same section.”

7. Section 26(1) accordingly limits consequential disqualification orders to offences specified in the second schedule to the Act. One of the offences specified in that schedule is described as “*Careless Driving*” (at paragraph 7) and reads as follows: -

“An offence by a person under section 52, where the contravention involved the driving of a mechanically propelled vehicle, being an offence committed in a period of 3 years in which 2 or more previous offences were committed by the person under that section for which he or she was convicted.”

8. Thus not all offences of careless driving attract a mandatory disqualification – merely where there have been at least two previous offences within a three year period.

9. As appears from section 26(4)(a) the periods of disqualification differ depending on the number of previous convictions for such an offence. We think that the reference to the

“*first offence*” and “*any subsequent offence*” in *that* paragraph by definition are references to the first (or subsequent) offence giving rise to disqualification – this paragraph does not, it must be emphasised, deal with which offences trigger mandatory disqualification but only with the length thereof when it arises under earlier provisions.

10. The judge has no discretion to decline to impose a consequential disqualification order where it arises but may, where he is satisfied that a special reason has been proved to exist (or in the case of a particular accused) may dispense with the production of a certificate of competency or both a certificate of competency and a certificate of fitness. This is the only mitigation which the judge may order in a case which attracts a mandatory disqualification.

11. For completeness one might add that on summary conviction [by virtue of section 26(5)] periods of two and four years rather than four or six years (on indictment) are contemplated. Perhaps most significantly the judge has a discretion to “*decline*” to impose such a mandatory disqualification in some circumstances in the case of summary convictions.

12. This issue has been previously dealt with by this Court in *Director of Public Prosecutions v Alam* [2017] IECA 311. There, on indictment, a guilty plea to careless driving causing serious harm was entered and the appellant received a consequential disqualification order of four years. He appealed on the basis that “*special reasons* [within the meaning of section 26(3)]” existed which would have justified the trial court either in declining to make a disqualification order or in specifying a period of disqualification of less than four years. The Court concluded as follows (at para 11): -

“*We carefully considered s.26 of the Act of 1961 as substituted. However, unlike in the case of a careless driving charge tried summarily (provided for under s.26(5) of the Act of 1961) we do not believe that in the case of a careless driving charge tried*

on indictment that a statutory power exists to either decline to impose a consequential disqualification for four years, or alternatively to impose a disqualification for a lesser period, on the grounds that a special reason or reasons exists. We have invited the appellant's counsel to direct us to where that power supposedly exists, if indeed it does exist, but she has been unable to do so."

13. It will be seen accordingly that this Court proceeded in that case on the basis that even if there were no prior convictions, whether within the three year period or otherwise, a consequential disqualification order would arise on a conviction. It was of the view, shared by counsel, and who were pressed as to any exception to the supposed rule, that such an order was mandatory. It was considered that on indictment there was no power to decline to make such an order or disqualify for a lesser period than four years [the minimum period is four years but, by definition, that arises only in the case of a mandatory disqualification]. It is understandable, to put the matter no further, that the state of the law has been subject to some continuing debate. We are satisfied however that *Alam* ought not to be followed; the present case has been more fully argued and most significantly counsel has been able to advance an interpretation to the effect that a mandatory disqualification order does not always arise.

14. Since there is merely one offence of careless driving (and no separate offence of careless driving causing serious injury or death) obviously when the Act speaks of "*careless driving*" (at paragraph 7 of the Schedule), it speaks of offences of careless driving contrary to section 52 whether or not they are tried on indictment or cause death or serious injury. The only distinction which arises under the Act between careless driving on the one hand – what we might call careless driving *simpliciter* – and, on the other, careless driving causing death or serious injury, is that the latter are tried on indictment. This in turn

gives rise to the differing periods of mandatory disqualification between offences dealt with on indictment or dealt with summarily respectively. The fact remains, however, that whether the prior offences have been dealt with summarily or on indictment, they are reckonable for the purpose of deciding whether a mandatory disqualification arises or not.

15. For ease of reference we refer again to the questions and answer them as follows: -

Question (1) Whether or not the accused, upon conviction for the offence of careless driving causing death tried upon indictment, contrary to s. 52(1) and (2)(a) of the Road Traffic Act, 1961 as substituted by s. 4 of the Road Traffic (No. 2) Act, 2011 is liable to a mandatory disqualification from holding any driving licence whatsoever for not less than four years in the case of a first offence and not less than six years in the case of a second or subsequent offence under the same section?

We think that it will be helpful if we break down the answer as follows: -

(a) A mandatory disqualification from holding a driving licence arises for such an offence only if there have been at least two previous offences contrary to section 52 (careless driving) (whether tried summarily or on indictment and whether involving death or serious injury or not) committed within three years prior to the offence i.e. the offence before the Court.

(b) The period of disqualification on the first offence which attracts such a mandatory disqualification is four years and if there is a second or subsequent such offence the period is six years; these periods apply to offences tried on indictment only.

(c) There is no power to decline to impose a mandatory disqualification order in cases dealt with on indictment where the conditions for such an order (as set out above) are fulfilled.

Question (2) Whether or not, in the interpretation of s. 26(3)(a) of the Road Traffic Act, 1961 as substituted by s. 65(1) of the Road Traffic Act, 2010, due to the special circumstances referred to in that section, the court may excuse for a specified reason the [Accused] from having to produce a certificate of competency and/or a certificate of fitness when seeking to hold a driving licence to the appropriate licencing authority or does the court have a general power to reduce for special reason the period of disqualification pursuant to the section?

Yes, the Court has power to excuse the necessity to produce a certificate of competence or fitness to the licencing authority but no power to reduce any period of consequential (mandatory) disqualification.