



THE COURT OF APPEAL

[209/21]

**The President
Edwards J.
Kennedy J.**

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

RESPONDENT

AND

NORMA KIELY

APPELLANT

**JUDGMENT of the Court (*ex tempore*) delivered on the 23rd day of February 2023 by
Birmingham P.**

Introduction

1. Before the Court is an appeal arising from a road traffic accident which occurred on 11th April 2018 at Clonmore, Dromcollogher, County Limerick. Arising from that road traffic accident, the appellant was initially charged with dangerous driving causing serious harm contrary to s. 53 of the Road Traffic Act 1961, as amended, and the case was listed for trial at Limerick Circuit Court in October 2021. The accused, as she was at the time, now appellant, offered a plea of guilty to the lesser charge of careless driving causing serious harm contrary to s. 52 of the Road Traffic Act 1961, as amended, and that offer was accepted by the prosecution and matters proceeded accordingly.

The Sentence

2. The Circuit Court judge dealt with the matter by imposing a one-year sentence of imprisonment, but suspended that in its entirety, and imposed a fine of €5,000 and proceeded to disqualify the appellant from driving for a period of four years. In proceeding to the disqualification, the judge operated on the basis that disqualification for that period was a consequence of the plea that had been entered by the appellant, that the disqualification for that period was mandatory, and, indeed, that minimum period was mandatory, and really the only question that he had to address was whether there was any special reasons which would allow him to dispense with the resitting of a driving test.

The Appeal

3. An appeal against severity was lodged by the appellant, and in the written submissions, all aspects of the penalty that had been imposed, *i.e.*, all aspects of the sentence hearing, were put in issue. However, in the course of the hearing this morning, counsel on behalf of the appellant, having asked for an opportunity to take instructions from the appellant, indicated that the aspect of the appeal insofar as it related to the suspended prison sentence and insofar as it related to the fine were not to be pursued. The affect of that is that the net issue before the Court is the question of disqualification.

Decision

4. It is clear that the Court has to address this because matters in the Circuit Court – and this is not in criticism of the Circuit Court judge – operated on the basis of what appeared to be the established law of the time, but this subsequently turned out to be an error of law because, in fact, the question of whether to disqualify, and if to disqualify for what period, was a matter for the judge’s discretion. In the Court’s view, the offence involved was a significant one. It appears clear that there was a considerable lack of attentiveness that was illustrated, if illustration is required, by the fact that, initially, the appellant was inclined to believe that no responsibility for this rested with her, indicating that there was a real lack of focus, and, of course, concentration and focus are to be expected of every driver.

5. In the Court’s view, even if the disqualification was not mandatory, it was a case where a period of disqualification had to be considered, and, indeed, in this Court’s view, it was a case where the imposition of a disqualification order was appropriate. One cannot lose sight of the fact that this accident – and it is accepted that it was caused by carelessness and inattentiveness rather than anything more serious, which would have led to a trial on a more serious count than was initially referred to – and the inattentiveness and carelessness associated with it have had consequences of the gravest kind for the unfortunate victim of this accident, whose whole life has been turned upside down. It seems to the Court that an appropriate order in the circumstances would be to provide for a disqualification for a two-year period.

Resentencing

6. We will substitute for the four years that the trial judge had provided for in the Circuit Court a disqualification for a period of two years. Because we are not dealing with a mandatory disqualification order, it is agreed on both sides of the court that the question of a mandatory resitting of the test subject to special circumstances does not arise.

7. The order of the Court is to leave in place, now that the appeal has not been pressed in that regard, the sentence of one year’s imprisonment suspended for one year – that period has in fact lapsed – and the fine of €5,000. The order as it relates to the period of disqualification is varied by the substitution of a period of two years for the four-year period, and that disqualification takes affect on the same day as the disqualification imposed in the Circuit Court.

8. As the aforementioned fine has not been paid yet, it is ordered that it is to be paid within one month of today’s date.