

18th August, 1986

Her Majesty's Attorney General

-v-

Philip William James Rogers

DEPUTY BAILIFF: The Royal Court applies the law of Jersey, and not that of England. The Court does keep up to date, and does not need Council to remind it of its duties, but it will not usurp the responsibilities of the States, and will not re-write the Law in line with the modern statutes of the United Kingdom. Now as far as driving while disqualified is concerned, Article 9(4) of the Road Traffic (Jersey) Law, provides that if any person who is disqualified, drives on the road, he should be liable to a fine not exceeding four hundred pounds, or imprisonment not exceeding twelve months, or both. Now this was a 1979 amendment, before which he would have been liable to imprisonment automatically, unless the Court found special circumstances. As far as driving uninsured is concerned, Article 2 of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948, as amended - provides that the penalty for the first offence is two hundred pounds or three months or both, but for a second or subsequent offence five hundred pounds or eighteen months or both. Now, that again was a 1979 amendment. Up to 1979 the penalty was fifty pounds or three months or both regardless of whether it was a first or subsequent offence. In 1979 the States deliberately made a substantially higher penalty for a second or subsequent offence, of a fine not exceeding five hundred pounds or imprisonment not exceeding eighteen months or both. In the minds of the legislator, therefore, from 1979 a second or subsequent offence of driving uninsured, was to be regarded as more serious than the offence of driving whilst disqualified. And we consider that this should be reflected in the sentences imposed.

The appellant has a bad record of motoring offences. Although he still is under twenty-one, he was represented by Counsel, and for that and other reasons the case is to be distinguished from that of Bowicz. We agree with the Relief Magistrate that driving whilst disqualified is an offence which has in this Island almost always resulted in a prison sentence. We also agree that a third offence of driving whilst disqualified must result in a custodial sentence. We also agree that the appellant has been a disgrace to his Club, and has behaved irresponsibly. We hope that this is a case where the "clang of the prison gates" applies, in other words the impact of the prison sentence rather than its length may persuade the applicant to stop holding the Law

and the Court in contempt as he has done. We also think that the Relief Magistrate should have applied the single incident rule regarding consecutive and concurrent sentences, but we take the view that the sentence of two months for the first charge was not a day too long for what was a multiplicity of offences.

We therefore vary the sentences imposed, so that the sentence will be two months on each of the two counts, concurrently, in other words we leave the sentence of the first count alone, we quash the sentence on the second count and substitute for it a sentence of two months imprisonment, concurrently, which will make two months in all.

**JURAT BONN:** It was three times driving uninsured.

**DEPUTY BAILIFF:** It was three times driving uninsured - yes, if I made a mistake about that it was a third occasion of driving uninsured. Now, are you on legal aid Mr. Begg?

**ADV. BEGG:** I am, Sir.

**DEPUTY BAILIFF:** You are? Then you will have your legal aid costs. Thank you.

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