

ROYAL COURT

76.

4th June, 1990

Before: The Bailiff, and  
Jurats Le Boutillier and Orchard

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Police Court Appeal: David Campbell Maden Monk

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Appeal against sentence of four months' imprisonment following a conviction on counts of driving with more alcohol in his breath than the limit prescribed by Law; driving whilst disqualified; and driving whilst uninsured.

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W.J. Bailhache, Esq., Crown Advocate,  
Advocate P.C. Sinel for the appellant.

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JUDGMENT

BAILIFF: The appellant in this case was stopped on Thursday, 10th May, 1990, at ten to two in the morning by a police car. They noticed that he was smelling of intoxicants and he had been driving erratically, but none of these matters were tested by cross-examination because the appellant pleaded guilty to a charge not under Article 16, but under Article 16(a)(i), that is to say having more alcohol in his breath than the limits prescribed by the law.

According to the police evidence he made three attempts to give a sample of breath and failed on each occasion; subsequently he succeeded at Police Headquarters and showed that the high figure was 91 and the low figure was 88.

In mitigation, although he was not represented, he said that he took a chance on driving a vehicle because he had a brother over on holiday and he wanted to show him round the Island. What exactly the brother was going to see in the Island at ten to two in the morning is difficult to say. But the appellant did go on to say: "And I just took the chance". And that was indeed the fact as we see it.

The learned Assistant Magistrate imposed a total of four months' imprisonment and five years' disqualification and the appellant appeals against the length of the sentence. Mr. Sinel for the appellant does not appeal against the principle of imprisonment for in fact the fourth offence and we think he is right not to have done so. The question of the length, however, is another matter.

The learned Assistant Magistrate was entitled to take into account the circumstances of the offence as well as of course the figures which the test showed. The appellant had three previous convictions under Article 16 and not Article 16(a)(i) of course. For the purposes of this appeal we will disregard the one in 1979; there were however two as recently as 1988.

The legislature has reduced the maximum sentence to six months for subsequent offences under Article 16; the previous maximum the appellant served or had been sentenced to was one of four weeks, we can therefore make a slight reduction in the total but we have to impose a sentence of imprisonment because we also regard an infraction of Article 9(iv) (driving whilst uninsured) as a serious offence. We are going to vary the sentences as follows: As regards the first charge, the sentence to be imposed will be six weeks; and as regards the second charge, six weeks; they will be consecutive making a total of twelve weeks imprisonment instead of sixteen weeks. Mr. Sinel, you will get your legal aid costs.

Authorities referred to:

A.G. -v- D.E. Muir (9th January, 1989) Jersey Unreported.

A.G. -v- W.S.B. Douglas (1st September, 1987) Jersey Unreported.

A.G. -v- A.J. Cook (2nd April, 1990) Jersey Unreported.

Wilkinsons Road Traffic Offences (13th ed.) (Vol. 1) pp. 330-336.