

ROYAL COURT
(Samedi Division)

28.

Before: The Bailiff, and Jurats
Gruchy and Orchard

Police Court Appeal: Mrs. Annette Leigh de la Haye

Appeal by way of case stated by the Crown against the sentence of one month's disqualification imposed by the Magistrate in respect of offences under Article 16(c) of the Road Traffic (Jersey) Law, 1956, of failing without reasonable excuse to provide a specimen of breath when requested.

Advocate S.C.K. Pallot for the Crown.
Advocate F.J. Benest for the Appellant.

JUDGMENT

BAILIFF: This is an unfortunate lapse which can occur of course where the learned Assistant Magistrate overlooked the very clear statutory provision which required him, in a case of this nature (that is to say a refusal to supply a specimen of breath at the Police Station contrary to Article 16(c) of the Road Traffic (Jersey) Law, 1956) and in the absence of special reasons, to impose a twelve month disqualification. He in fact imposed a one month disqualification when the case came before him on the 25th October, 1990.

For various reasons that we need not go into through no fault of Mrs. de la Haye, nor indeed the Crown, this matter was not disposed of earlier as it really should have been in circumstances of this nature.

Today, Mr. Benest very fairly has admitted that he cannot oppose the legal basis of the case stated inasmuch as the requirements of disqualification are clear; but he has invited the Court to extend the circumstances to cover these particular ones; that is to say that there are special circumstances, he says, which would entitle this Court not to disqualify for twelve months but to substitute a shorter time. Even if the Court were minded to allow the appeal, because it is by way of a case stated, Mr. Benest has urged us to backdate the twelve months as far as possible, if not indeed to the date of the actual conviction on the 25th October.

The principles of special reasons have been considered by this Court on at least two previous occasions, certainly in the most recent case on the 7th August, 1989, in an appeal by Mrs. Jacqueline Pearl Priest, where the Court was prepared to examine the possibility of an extension of the principles set out in the English case of Whittal -v- Kirby (1946) 2 All ER 552 to a situation where a driver had only driven for a very short time; that did not apply because the appellant in that case drove on a public road; and this is the case here. Mrs. de la Haye did in fact drive for half a mile on a public road and therefore even if we were minded to consider that Whittal -v- Kirby might apply we do not think that it could apply to this case.

We were left with the four principles which have been referred to in an earlier case in more detail; the appeal by Mr. Dennis George Le Monnier; the judgment was given by the learned Commissioner Hamon on the 26th April, 1989. In that judgment, at page 3, Mr. Hamon refers to the judgment of the Deputy Bailiff in the case of AG -v- Jonathon James Clarke on the 17th March, 1988, where the case of Whittal -v- Kirby is mentioned; that case in fact approved an earlier Northern Ireland case.

The four minimum criteria were later laid down in R -v- Wickens (1958) 42 Crim. App. R. at 236 as follows: A special reason must:

- "(a) be a mitigating or extenuating circumstance;
- (b) not amount in law to a defence to the charge;
- (c) be directly connected with the commission of the offence;
- (d) be one which the Court ought properly to take into consideration when imposing sentence".

Mr. Benest has suggested that we should take into account not something which existed at the time of the offence, nor indeed that existed at the time of the conviction, but something which has arisen since the conviction and that something is in fact two things; first that Mrs. de la Haye has acquired accommodation and secondly employment and that perhaps one if not both of those matters would be prejudiced, if not endangered, were she once more, to lose her licence. I say once more because she went without a licence for one month then re-took her test on the 4th January of this year. But unfortunately examination of the Le Monnier case shows that Mr. Commissioner Hamon was looking at the special provision in Article 14 of the Road Traffic (Jersey) Law which provided specifically for a period of time to count as a special reason; and he linked that provision in Article 14 to Article 16, having very carefully examined the statute.

This Court is therefore asked to extend that provision even more, not by reference to different Articles in the same statute, as was the case in Le Monnier, but really as a matter of compassion. This Court cannot close its mind to compassion, but compassion cannot be substituted for legal principles and unfortunately we do not think that the Law would allow us to extend the principles in a way suggested by Mr. Benest to circumstances which have happened since the occurrence of the circumstances which gave rise to the conviction. Therefore, although we have sympathy with your client, Mr. Benest, we do not think that we would be justified in adopting an extension of that nature in this case. As a result of our finding we propose to substitute a twelve month disqualification, but we will do the best we can for your client, Mr. Benest, by making it date from the 25th October, 1990. I make no order for costs.

Authorities cited:

AG -v- Le Monnier (26th April, 1989) Jersey Unreported.

AG -v- Priest (7th August, 1989) Jersey Unreported.

Whittal -v- Kirby (1946) 2 All ER 552.

AG -v- Clarke (17th March, 1988) Jersey Unreported.

R -v- Wickens (1958) 42 Crim. App. R. at p.236.