

ROYAL COURT
(Samedi Division)

10th October, 1994

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Before: The Deputy Bailiff and Jurats
Coutanche and Le Ruez

Police Court Appeal
(T.A. Dorey, Esq., Magistrate)

William James Perret

-v-

The Attorney General

Application for an extension of time within which to give notice of appeal.

Appeal against a 4 year disqualification from driving passed on 15th November, 1993, following guilty plea to:

1 charge of driving a motor vehicle after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit, contrary to Article 16A (1) of the Road Traffic (Jersey) Law, 1956, as amended.

(The appellant was also fined £500 or 4 week's imprisonment in default of payment, against which no appeal was brought).

Application for extension of time granted.

Appeal allowed; 4 year disqualification quashed; 18 month disqualification substituted.

Advocate D.M.C. Sowden for the Appellant
J.G.P. Wheeler, Esq., Crown Advocate

JUDGMENT

5 THE DEPUTY BAILIFF: William James Perret was convicted on 15th
November, 1993 of an infraction of Article 16A(1) of the Road
Traffic (Jersey) Law 1956 by driving a motor vehicle after
consuming an excessive amount of alcohol. He was fined £500 and
disqualified for holding a driving licence for 4 years. He now
10 applies for leave to appeal out of time against the
disqualification of 4 years imposed upon him and, if that

application is granted, he seeks to appeal against the disqualification.

5 On the question of whether we should grant leave to appeal out of time counsel drew our attention to the case of La Solitude Farm Limited -v- The Attorney General (1985-86) JLR 1 C.of.A. The head note of the judgment in that case states:

10 *"Held dismissing the application:*

15 (1) *An extension of time within which to appeal would only be granted where special circumstances of an important character were disclosed for there was a clear public interest in charges being disposed of quickly. The fact that a point of law had been available at the time of trial but had not been taken by the applicant, who had been professionally represented at the trial, was not a special circumstance of a character important enough to justify the extension of time."*

20 Le Quesne J.A., giving the judgment of the Court said this:

25 *"The application is based on the following argument. It is said that the Court's conclusion in June, 1981, that the use in question was an unauthorised use was based upon the view taken by the Court of the law as interpreted in England. The view which the Court took, so it was argued, was in fact wrong because the particular authority upon which the Court relied had in fact been invalidated by a decision of the House of Lords given in 1980. Therefore, it is said, the conviction of June 29th, 1981, was based on an erroneous view of the law and, the argument continues, since the enforcement notice was itself based on that conviction and the view which the Court had taken in reaching that conviction, if the conviction were invalid then the enforcement notice must also have been invalid.*

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40 *It will be seen, at once, that this is not a case in which a conviction was based on a certain view of the law and that view of the law was subsequently held by a superior court to be wrong. Cases of that sort do raise special considerations but this is not such a case."*

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50 Counsel submits that this is such a case in that this Court held in the case of Oliver -v- A.G. (25th July, 1994) Jersey Unreported, that a previous conviction for an offence under Article 16 did not require the Magistrate in sentencing for an infraction of Article 16A to impose a minimum disqualification of 3 years.

Unfortunately, we cannot be sure in this case what the Magistrate did have in mind when he imposed the disqualification of 4 years. He might have had the provisions of Article 16A in mind or he might have had in mind the consideration that the appellant was twice convicted in 1984 for infractions of Article 16. On the other hand those convictions in 1984 took place some 9 years before the Magistrate was called upon to pass sentence in this case.

We think that we must give the benefit of the doubt to the appellant and take the view that the Magistrate might have been influenced by the terms of Article 16A(2) which requires him to impose a minimum disqualification of 3 years for a second offence under that Article.

Because we are also entitled to take into account in considering an application for leave to appeal out of time the likely consequences of the appeal and the merits of the appeal, we therefore grant the application for leave to appeal out of time.

Because we have been persuaded, as we have said, that the Magistrate might have been under a misapprehension when he imposed the disqualification of 4 years, we therefore grant the appeal and quash that disqualification.

We were invited both by Counsel and by the Crown Advocate to invoke our powers under Article 17 of the Police Court Miscellaneous Provisions (Jersey) Law 1949 to remit the matter to the Police Court for consideration there as to the appropriate length of disqualification. We do not think that in this case it would be appropriate for us to exercise that power for two reasons. First, all this took place nearly a year ago and the likelihood of the Magistrate's recollecting the evidence upon which he passed the sentence seems to us to be remote. Secondly, the Magistrate, who in fact heard the case, is now out of office although he does sit as a relief from time to time. We therefore propose to deal with the matter ourselves. We have taken note of the fact that the appellant was detained, having been stopped by an officer for speeding. When he was stopped and the statutory test had been carried out, it was found that he had 90 milligrams of alcohol in 100 millilitres of blood. He was therefore only just over the statutory limit. We take account however, although we do not attribute much weight to them because of the fact that they took place nine years ago, of his previous convictions for offences under Article 16 of the Law. We therefore quash the disqualification of 4 years and substitute a disqualification of 18 months. Miss Sowden, you will have your costs.

Authorities

Oliver -v- A.G. (25 th July, 1994) Jersey Unreported.

La Solitude Farm, Ltd. -v- A.G. (1985-86) JLR 1.

Aubin -v- A.G. (7th February 1985) Jersey Unreported; (1985-86)
JLR N.26.

Fossey -v- A.G. (1982) JJ 223.