SHERIFF APPEAL COURT

[2016] SAC (Crim) 21
SAC/2016/000306/AP

Sheriff Principal C A L Scott QC
Sheriff M O'Grady QC

STATEMENT OF REASONS

delivered by SHERIFF PRINCIPAL C A L SCOTT QC

in

APPEAL AGAINST SENTENCE

by

CIARAN DOCHERTY

Appellant;

against

PROCURATOR FISCAL, PAISLEY

Respondent:

Appellant: I Paterson; solicitor advocate; Paterson Bell, Solicitors
Respondent: D Small, *ad hoc;* Crown Agent

29 June 2016

[1] The appellant in this case was disqualified from driving for a period of 2 years. The disqualification was imposed in respect of a contravention of section 5(1)(a) of the Road Traffic Act 1988. Financial penalties were also imposed. However, those penalties are not challenged on appeal.

[2] When the note of appeal is considered, the thrust of the appeal seems to be that the appellant is an 18 year old first offender who since committing the offences has voluntarily withdrawn himself from driving lessons; has not driven since; and in the knowledge that he would receive a financial penalty has had the foresight to save money to be paid towards his fine in full. What is said in the note of appeal is that, in all the circumstances, the appellant feels that the period of disqualification is excessive.

[3] However, in the appellant's written submissions, which were lodged on 16 June, a separate argument founded upon the court's decision in the case of *Jenkins* v *The Procurator Fiscal, Stranraer* is advanced. In *Jenkins* the breath alcohol level of the appellant was 87 microgrammes of alcohol in 100 millilitres of breath and the sheriff in *Jenkins* associated what he characterised as an extremely high level of alcohol in the appellant's breath with the attendant risk to other road users. The court held that the approach of the sheriff in *Jenkins* had been erroneous and at paragraph 12, in giving the court's opinion, the President of the Court observed that the risk presented by drivers committing a first drink driving offence is not increased by virtue of the lower limit. "*A driver who has a reading of 87 microgrammes of alcohol in 100 millilitres of breath is clearly guilty of an offence and also poses a risk to public safety, but that risk is no greater than it was when the prescribed limited was the previous higher breath alcohol limit of 35*."

[4] In his report in the present case, the sheriff narrates that police officers had stopped the vehicle being driven by the appellant around midnight on the date in question. The appellant's breath smelled of alcohol, his eyes were glazed and his speech was slurred. When spoken to by officers the appellant replied "I've fucked up. I've had a few drinks and just drove round the back". The appellant was arrested and taken to the police office where the relevant procedure was carried out with the result that a reading of 44 microgrammes of

alcohol in 100 millilitres of breath was disclosed. The sheriff also suggests that he, the sheriff that is, fails to understand the grounds of appeal advanced. He observes that notwithstanding the fact that the appellant's reading was two times the legal limit an argument challenging the extent of the period of disqualification is made out on the basis that the appellant had only driven half a mile from the family home, when stopped by the police had voluntarily withdrawn himself from driving lessons, had not driven since and had saved money towards his fine.

[5] For our part we regret to say that the sheriff in the present case appears to have fallen into the same sort of error as that which affected the sheriff's approach in *Jenkins*. It is plain that the sheriff placed considerable weight upon the fact that the appellant was "two times over the legal limit" and that the appellant had "such a level of alcohol in his system". (Reference is made to the final paragraph in the sheriff's report).

[6] In deciding upon a period of disqualification to be imposed in the context of drink driving offences involving the lower prescribed limit which now applies in Scotland, it is always necessary to consider the risk posed by any offender. However, as the court in *Jenkins* explained, care must always be taken when it comes to evaluating that risk under reference to the alcohol reading. Where we are satisfied that the sheriff misdirected himself, the assessment of the period of disqualification is at large for this court to determine upon the facts and submissions available to it. The appellant falls to be sentenced for a first drink driving offence and indeed he is in general terms a first offender. We have noted the level of alcohol in the appellant's breath and we have taken account of the other factors narrated by the sheriff and highlighted today by Mr Paterson. Relatively significant financial penalties were imposed and these have not been challenged on appeal.

[7] In all the circumstances standing the appellant's pleas of guilty at the intermediate diet stage, we are of the opinion that the disqualification imposed by the sheriff for a period of 2 years should be quashed and in place thereof we shall impose a headline period of disqualification amounting to 16 months discounted to a period of 12 months which, of course, happens to equate to the statutory minimum period in this context.