



SHERIFF APPEAL COURT

**[2018] SAC (Crim) 12
SAC/2018/000264/AP**

Sheriff Principal M W Lewis
Sheriff P J Braid

OPINION OF THE COURT
delivered by SHERIFF P J BRAID
in
APPEAL AGAINST SENTENCE
by
ALAN LOVE

Appellant

against

PROCURATOR FISCAL

Respondent

**Appellant: C Mitchell; Scullion Criminal Lawyers
Respondent: P Kearney Advocate Depute; Crown Agent**

20 June 2018

[1] The justice of the peace in this case imposed a headline sentence of 2 years disqualification from driving for speeding on the M77. The offence consisted of driving at 93 mph against a speed limit of 70 mph. The sentence was discounted by a third.

[2] We were referred to the English sentencing guidelines by counsel for the appellant. These perhaps are of limited use where, as here, the justice placed considerable weight on

the appellant's previous road traffic convictions as she was entitled to do, but they are helpful insofar as they indicate that the gravity of the offence falls within the middle band.

[3] The justice sets out the appellant's record at some length in her report. We note that, perhaps unlike the appellant's driving, the record has slowed down in recent years.

Nevertheless, in our view the justice was correct to treat the present offence as meriting disqualification in light of the record. That said, we do consider that there is merit in the submission that the sentence selected is more akin to that which might have been imposed for a contravention of section 2 of the Road Traffic Act, namely dangerous driving, the sentence does fall within the wrong bracket and is excessive.

[4] Before going on to say what sentence we intend to impose, we agree that it would have been helpful for the justice of the peace in this case to have indicated to the defence that she did have disqualification in mind, if only because the consequences of disqualification are undoubtedly a relevant sentencing factor and it appears that that was information which the justice did not have, although that in no way detracts from the fact that it was incumbent on the defence to have appreciated that disqualification may have been in contemplation, standing the previous record.

[5] Turning to consider what the sentence should have been, there is much force in the justice's comments regarding the record which did justify a higher sentence than the guidelines suggested. Having regard to the same factors as the sheriff, but taking into account the mitigation which is now before us, we consider that a starting point of 12 months would have been more appropriate for the offence in light of the record. In our view discount of a sixth is more appropriate than that allowed by the justice. Accordingly, we will quash the disqualification and replace it with one of 10 months.