

JERSEY / JUDGMENT

AG -v- Hollings [2015]

JRC 064 (30 March 2015)

[2015] JRC 064

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JUDGMENT

THE commissioner: 1. The defendant is before the Royal Court on a number of counts but in particular he has entered a not guilty plea in respect of one count of driving whilst disqualified, contrary to Article 15(4)(b) of the Road Traffic (Jersey) Law ("the Road Traffic Law"), on the basis that as a matter of law, he was not disqualified at the material time. That legal argument came before me on 9 th February, 2015. 2. On 11 th February, 2010, the defendant was disqualified from driving for a fixed period of 3 years following his guilty plea to one count of driving under the influence of drugs contrary to Article 27(1) of the Road Traffic Law. 3. Article 35(1) of the Road Traffic Law provides that:- "On the conviction of a person for an offence under Articles ... 27 ..., where the Court makes an order disqualifying that person for holding or obtaining a driving licence for a fixed period of time, it shall make an order disqualifying the person for holding or obtaining a licence (other than a provisional licence) until he or she has, since the end of that fixed period, passed the prescribed test." 4. Notwithstanding these mandatory provisions, it is clear from the Act of Court and the judgment of the Court of 11 th February, 2010, (AG-v-Hollings

[2010] JRC 032) that, contrary to the obligations placed upon it, the Court did not make an order disqualifying the defendant for holding or obtaining a licence until he had, since the end of the fixed period of 3 years, passed the prescribed test. 5. At some point after being sentenced by the Royal Court (possibly on 12 th February, 2010,) the defendant signed a form which I am told is routinely used in these cases and which is in the following terms:- "IN THE ROYAL COURT OF JERSEY In the year 2010, the 11 th day of February Mark Lee Hollings THE COURT HAS ORDERED THAT YOU BE DISQUALIFIED FROM DRIVING FOR A PERIOD OF THREE YEARS FROM 11 TH FEBRUARY, 2010 You are required within THREE DAYS to submit your licence to: The Magistrate's Court Greffe Union Street ST HELIER JE1 1BH Failure to do so will render you liable to a fine of £500. You may recover your licence at the end of your period of disqualification by applying to your licensing authority - the Connétable of the parish in which you reside. If you were disqualified for dangerous driving, driving without due care and attention, for a drink/drive offence (i.e. an offence under Article 22, 23, 25, 26, 27 and 28 of the Road Traffic (Jersey) Law, 1956) at the end of your period of disqualification you must pass the prescribed test and will be granted a provisional licence until you do so.

I have read the above notes and I understand them. I am a licence holder Signed (The defendant) Date (12/2/2010)" 6. This form is clearly drafted for holders of Jersey driving licences; the defendant was driving under his UK licence as a visitor and had no Jersey driving licence to submit; I presume that his UK driving licence was not submitted. 7. The offence with which the defendant is currently charged took place on 13 th September, 2014, well after the expiry of the fixed period of disqualification of 3 years. It is accepted by the Crown that at the time of this alleged offence (as at the time of the offence in 2010,) the defendant was not resident in the Island - he was visiting. He held what the Crown also accepts is a valid UK driving licence. 8. Regulation 2(1) of the Motor Vehicles (International Circulation)(Jersey) Regulations provides as follows in relation to visitors' driving permits:- "2 Visitors' driving permits (1) Subject to the provisions of this Regulation, it shall be lawful for a person resident outside Jersey who is temporarily in Jersey and holds - (a) ...; (b) a domestic driving permit issued in a country outside Jersey; or (c) ... during a period of 12 months from the date of the person's last entry into Jersey to drive, ... in Jersey a motor vehicle of any class or description which the person is authorized by that permit or that licence to drive, notwithstanding that the person is not the holder of a licence within the meaning of the Road Traffic (Jersey) Law 1956." 9. Regulation 2(4) however, goes on to provide:- "This Regulation shall not authorize a person to drive a motor vehicle of any class or description if, in consequence of a conviction or of the order of a court, the person is disqualified for holding a driving licence under the Road Traffic (Jersey) Law 1956." 10. The defendant's case, as put forward by Advocate Landick, was very straightforward. For whatever reason, no order was made by the Court on 11 th February, 2010, under Article 35(1) of the Road Traffic Law extending the defendant's disqualification beyond the end of the fixed period of 3 years until he had passed the prescribed test. As a matter of law, therefore, the period of his disqualification from holding or obtaining a licence expired on th February, 2013. 11. When he visited the Island in 2014, and drove a vehicle, he was permitted to do on the basis of his UK licence, pursuant to Regulation 2(1). Regulation 2(4) did not apply because at that time he was not disqualified from holding a driving licence under the Road Traffic Law. 12. Advocate Pedley argued to the contrary based on a different interpretation of the relevant provisions. He relied in part upon the fact that by signing the above form, the defendant had acknowledged an understanding that at the end of the fixed period of disqualification of 3 years he had to pass the prescribed test. An analysis of a number of cases in which the Royal Court had disqualified defendants from driving (invariably in connection with more serious offences), showed that on no occasion bar one had the Court complied with its obligation to make an order pursuant to Article 35(1), the implication being that such an order might be in effect automatic. 13. The Road Traffic Law was, he said, concerned only with Jersey driving licences. Under that Law the defendant has never held a valid licence. His ability to drive prior to his conviction on the 11 th February, 2010, was allowed under Regulation 2(1) using his UK licence. His ability to drive post that conviction using his UK licence is proscribed by Regulation 2(4) and remains proscribed until he has passed the prescribed test. 14. In discussion, Advocate Pedley conceded that the holder of a Jersey licence who had been disqualified for a fixed period without an order being made under Article 35(1) would be in a

position to demand the return of his licence at the end of that fixed period; the defendant had no licence under the Road Traffic Law to have returned to him. Decision 15. It would have been open to the legislature to have provided that upon a conviction under Article 27 of the Road Traffic Law (and the other relevant articles) and where the Court makes an order disqualifying that person from holding or obtaining a driving licence for a fixed period of time, then that person would automatically be disqualified from holding or obtaining a licence (other than a provisional licence) from the end of that fixed period until he or she had passed the prescribed test; but the legislature did not so provide. It required the Court to make an order to that effect and unless the Court makes such an order, then in my view, as a matter of law, no such order exists. No form signed by the defendant can create an order of the Court where none has been made by the Court. 16. I agree that the Road Traffic Law is only concerned with Jersey driving licences and the references to holding or obtaining a licence means a licence under the Road Traffic Law. The defendant has never held such a licence and indeed would be unable to obtain one unless he took up residence here; Article 7A of the Road Traffic Law provides that only persons resident in Jersey can apply for a Jersey driving licence. 17. The defendant's position as a visitor is entirely governed by Regulations 2(1) and (4). Regulation 2(1) allowed him to drive in the Island using his UK licence. Regulation 2(4) had no application because at that time (13 th September, 2014,) he was not, as a matter of law, disqualified from holding a driving licence under the Road Traffic Law; that disqualification had come to an end on the 11 th February, 2013. 18. There were a number of alternative arguments put forward by Advocate Landick which I need not address in the light of the above. 19. It follows that the defendant must be discharged from this count. Authorities Road Traffic (Jersey) Law 1956. AG-v-Hollings

[2010] JRC 032 . Motor Vehicles (International Circulation)(Jersey) Regulations 1958. Page Last Updated: 27 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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