

JERSEY / JUDGMENT

AG v Power [2000] JRC 32 (21 February 2000)

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JUDGMENT

THE DEPUTY BAILIFF: As this is a matter of law I will give a short judgment. This is an appeal by Mr Aidan Power against a sentence of 3 years' disqualification from driving imposed on him at the Magistrate's Court on 23 rd December, 1999, for an offence of failing to provide a specimen for analysis contrary to Article 16C(7) of the Road Traffic (Jersey) Law, 1956 . Mr Power has 2 previous convictions before the Magistrate's Court relating to driving after the consumption of alcohol. On 17 th December, 1971 he was convicted of an offence of driving a motor vehicle whilst unfit through drink or drugs contrary to Article 16. On 2 nd June, 1993, he was convicted of driving a motor vehicle with an excess concentration of alcohol above the prescribed limit contrary to Article 16A. When he appeared before the Magistrate's Court on this occasion it was believed by both the Magistrate and counsel appearing for the appellant that there was a compulsory minimum period of 3 years' disqualification from driving because of the provisions of Article 16C(8) of the Law, and a period of 3 years was therefore imposed. Miss Fitz on behalf of the appellant submits that that was an erroneous reading of the relevant provision. Article 16C (7) provides: "A person who without reasonable excuse fails to provide a specimen when required to do so in pursuance of this Article shall be guilty of an offence and liable to a fine not exceeding £2,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment." Article 16C (8) provides: "A person convicted of an offence under paragraph (7) of this Article shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, in the case of a first offence be disqualified for a period of 12 months, and in the case of a second or subsequent offence for a period of 3 years for holding or obtaining a licence." Miss Fitz contends that the reference to a second or subsequent offence in Article 16C (8) clearly refers to a second or subsequent offence contrary to Article 16C (7). It does not cover, for example, previous offences under Article 16 (Driving whilst unfit) or Article 16A (Driving with alcohol above the prescribed limit). In this she is supported by Advocate Belhomme, appearing on behalf of the Attorney General. The Court agrees that this is the only possible construction of Article 16C (8). It follows that the Magistrate was not compelled to impose three years disqualification as he thought and the Court therefore proposes to allow the appeal and to remit the matter to the Magistrate for further consideration in the light of this judgment as to the correct interpretation of Article 16C

(8). However, the Court wishes to draw attention to the unsatisfactory effect of the drafting used in Articles 16, 16 (A) and 16 (C). The provisions of Article 16 (2) and 16 (A) provide in very similar terms to that contained in Article 16C (8) and the effect is therefore the same. The second, or subsequent offence, has to be of exactly the same type as the previous offence. So, for example, where a person commits an offence of driving with excess alcohol (contrary to Article 16 (A)) and then shortly afterwards is convicted of driving whilst unfit through alcohol (contrary to Article 16) the three year minimum disqualification provisions do not apply because the second offence is not identical to the first. The position appears to be different in the United Kingdom where section 34 (3) of the Road Traffic Offenders Act. 1988 provides as follows: "(3) Where a person convicted of an offence under any of the following provisions of the Road Traffic Act 1988, that is:- (aa) section 3A (causing death by careless driving when under the influence of drink or drugs), (a) section 4(1) (driving or attempting to drive while unfit), (b) section 5(1)(a) (driving or attempting to drive with excess alcohol), (c) section 7(6) (failing to provide a specimen)..... has within the ten years immediately preceding the commission of the offence been convicted of any such offence, subsection (1) above shall apply in relation to him as if the reference to twelve months were a reference to three years." It follows that it does not matter in the United Kingdom exactly which offence is committed. If an offender has previously committed an offence of the relevant class, the three year mandatory provision applies. Given the clear intention of the legislation in Jersey that those who persist in driving a motor vehicle after having consumed too much alcohol should face a mandatory three year period of disqualification, the Court draws the deficiency shown by the present case to the attention of the relevant Committee so that it may consider whether it wishes to amend the law so as to achieve the same position as exists in the United Kingdom. No Authorities Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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