

JERSEY / JUDGMENT

Da Silva v AG 29-Jan-2021 [2021] JRC 028 (29 January 2021)

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JUDGMENT

THE COMMISSIONER: 1. This is an application by the Applicant for an extension of time in which to appeal against the sentence imposed upon him in the Magistrate's Court on 3rd June, 2019. 2. The Applicant is a Portuguese national whose English is limited. Correspondence between him and the Greffier has been via his daughter. It has been explained by the Greffier that the Applicant could have his application heard orally in Court or by consideration on the papers. The Applicant has opted for consideration on the papers. At one stage he was considering consulting an advocate with a view to the advocate preparing a further letter in support of his application, but his daughter subsequently confirmed that he no longer wished to seek legal advice and was content that I should determine the matter on the basis of the material already submitted. Accordingly, I have considered this matter on the basis of the documents from the Magistrate's Court, the Applicant's letter of explanation (which has been translated into English for him) and the emails from his daughter.

Background

3. The record of the Magistrate's Court shows that the Applicant was charged with an offence under Article 28(1)(a) of the Road Traffic (Jersey) Law 1956 ("the Law"), namely that on 1st June, 2019, at Goose Green Car Park, St. Peter, he had driven a motor vehicle with a level of alcohol in his breath (53 microgrammes of alcohol in 100 millilitres of breath) which exceeded the prescribed limit of 35 microgrammes. 4. The Applicant appeared before the Magistrate on 3rd June, 2019. An interpreter was sworn and the Applicant was represented by the duty advocate. After pleading guilty, he was fined £2,000 and disqualified from holding a driving licence for a period of 16 months. The Magistrate also ordered that the Applicant would have to take the prescribed driving test at the end of the disqualification period. 5. The Applicant signed, in the presence of a Greffier Substitute, the standard form supplied by the Magistrate's Court recording the period of disqualification. The form states just above the Applicant's signature: "You may recover your licence at the end of your period of disqualification by applying to the 'Driver and Vehicle Standards Dept, La Collette, St. Helier.' If you were disqualified under any of the following Articles, 22, 23, 23(a), 25, 25(a), 26, 26(a), 26 (b), 27, 28, 29 or 30 you MUST read Part 2 overleaf" 6. Part 2 overleaf sets out

Articles 35(1) and (2) of the Law and then goes on to say: "If you were disqualified under any of the above mentioned Articles, and when your period of disqualification has expired; you MUST first obtain a Jersey Provisional Driving Licence from your parish hall and then successfully complete both the theory and practical driving test before obtaining a full Jersey driving licence. After passing the theory and practical driving test you must take your Jersey Provisional Driving Licence and the Practical Pass Certificate to your Parish Authority to obtain a full Jersey Driving Licence. YOU WILL REMAIN DISQUALIFIED FROM DRIVING UNTIL YOU COMPLETE THIS REQUIREMENT." Article 28 is one of the 'above-mentioned Articles'. This application 7. Article 17(1) of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1956 (the "1956 Law") provides that a person who has pleaded guilty before the Magistrate's Court may appeal to the Royal Court against that sentence. Article 18(1) provides that the notice of appeal must be lodged with the Judicial Greffier within 8 days after the date on which the decision of the Magistrate's Court was given, but Article 18(3) provides for the possibility of an extension of that time limit in the following terms: "Where it appears to the Royal Court, on an application made in accordance with Paragraph (4), that any person wishing to appeal to that Court from the Magistrate's Court has failed to give the notice of appeal required by this Article within the period of 8 days prescribed by Paragraph (1), the Royal Court may, if it thinks fit, direct that any such notice of appeal previously given by the applicant after the expiration of the said period, or any such notice to be given by the applicant within such further time as may be specified in the direction, shall be treated as a given within the said period." 8. Paragraph

- (4) simply provides that an application under Paragraph (3) must be made in writing to the Judicial Greffier, as has been done in this case. 9. In *AG v Fossey* [1982] JJ 223, the Court made it clear that an extension of time in which to appeal in a criminal case is not given as a mere matter of form. Substantial grounds must be shown for the delay before the Court will exercise its discretion in favour of an applicant. The longer the delay, the more onerous is the duty of the applicant to show that there are substantial grounds to justify the grant of an extension of time. 10. When considering whether substantial grounds have been shown, the Court is likely to need to consider the length of the delay, the reasons for not appealing in time, and the merits of the proposed appeal. 11. In relation to the length of the delay, that is clearly considerable in this case, namely some 18 months. 12. So far as the reasons for the delay are concerned, the Applicant has explained that, although he had the benefit of an interpreter and representation by the duty advocate before the Magistrate's Court, he was not aware that he would have to take the driving test at the expiry of the disqualification period and that he would remain disqualified until he had passed the test. He only discovered this when he attended at the Driver and Vehicles Standards Office ("DVS") on the day after his 16 month disqualification period expired and was told that he would have to pass the driving test before he could have his licence back. This came as a complete surprise to him. 13. It is also a great concern to him. He states that his comprehension of and ability to write English is extremely limited and he considers it would be impossible for him to pass the theory part of the driving test. His daughter confirms his limited familiarity with the

English language. I am content to proceed on the basis that he did not realise that he needed to retake the test until he attended at DVS and that he will face very considerable difficulties in relation to the theory part of the test if it is in English. 14. He initially approached the Magistrate's Court so see if he would be allowed to appeal out of time against the requirement that he take the driving test, but was informed that it was too late and that application should be made to the Royal Court; hence his present application. 15. I consider thirdly the merits of any appeal. It is here that the present application runs into insuperable difficulties. 16. As already stated, the Applicant pleaded guilty to committing an offence contrary to Article 28(1) of the Law. Article 28(2) provides: "A person convicted of an offence under paragraph (1) shall , unless the court for special reasons think 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 ... for holding or obtaining a licence." [Emphasis added] 17. It follows that the Magistrate had no choice but to disqualify the Applicant for 12 months unless she could find 'special reasons'. 18. Article 35(1) of the Law provides: "(1) On the conviction of a person from an offence under Articles 28, 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 until he or she has, since the end of that fixed period, passed the prescribed test." [Emphasis added] . 19. It follows that, where a person has been convicted of an offence under Article 28 and the Magistrate's Court has made a disqualification order, that Court has no option but to order that the disqualification continues until the person has passed the driving test. It is simply not open to the Court to allow a person to resume holding a licence after the end of the disqualification period without passing the prescribed test. This provision applies to the Royal Court on appeal in exactly the same way that it applies to the Magistrate's Court when passing sentence originally. It follows that it would simply not be open to the Royal Court to allow any appeal against the order of the Magistrate that the Applicant must pass the driving test before he can once again hold a driving licence. 20. Although the application of the Applicant is in relation to the need to take the driving test, I have also considered whether there would be any grounds for him to appeal against the disqualification order itself. However, on that aspect too, the Royal Court would not be able to allow any appeal. It is well established that 'special reasons' can only relate to the circumstances surrounding the offence itself, not to any mitigating factors in relation to the driver or to any hardship that may be caused to a particular driver as a result of disqualification; see for example *AG v Clark* 1987 - 88 JLR 448 at 470. Thus, even where an offender will lose his livelihood as a result of disqualification (because his job requires him to drive), the Court has no option but to disqualify him for at least 12 months. 21. There is nothing in the material before me which suggests even the possibility of arguing for the existence of 'special reasons' in the present case. The only matter relied upon is the hardship to the Applicant caused by reason of the fact that it will be particularly difficult - and he would say, impossible - for him to pass the theory examination because of his limited English. If he cannot pass the test, he will not be able to reacquire his driving licence and will therefore suffer prolonged and indefinite hardship.

However, this is something personal to the Applicant as the offender, not something related to the offence itself. It cannot therefore in law constitute a 'special reason'. 22. In circumstances where: (i) disqualification under Article 28 is mandatory unless there are 'special reasons'; (ii) there are no arguable grounds for a finding of 'special reasons'; and (iii) a requirement to take the driving test at the expiry of the disqualification period is mandatory, the Magistrate had no choice but to order the taking of a test at the end of the disqualification period and there is no possibility of the Royal Court having power to make any different order on appeal. 23. Where an appeal is doomed to failure, there can be no justification for granting an extension of time in which to appeal and accordingly I am afraid that this application is refused. 24. I would add that, on reading the papers, I asked the Greffier to contact DVS to see if there was any possibility of the Applicant being able to take the theory test in Portuguese. She was informed that the theory test could only be taken in English, although there was an option to have an audio headset if reading was difficult, but the audio would also be in English. 25. It is of course a matter for the DVS but, on the face of it, if the Applicant were able to satisfy DVS that his knowledge was sufficient to pass the theory paper (even if questions were asked and answered in Portuguese) and that he was familiar with and understood all the signs that he would come across on the road etc., there would not appear to be any good reason to deny him a licence. I would therefore invite DVS to see if some mechanism can be established whereby he can be adequately tested on his knowledge and safety to drive in Jersey rather than on his facility with the English language. Authorities Road Traffic (Jersey) Law 1956. Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1956. AG v Fossey [1982] JJ 223. AG v Clark 1987 - 88 JLR 448. Page Last Updated: 17 Feb 2021 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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