

JERSEY / JUDGMENT

Gomes -v- AG [2012] JRC 149 (08 August 2012)

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JUDGMENT

THE BAILIFF: 1. This is an appeal against a sentence of 4 months' disqualification imposed by the Relief Magistrate, Advocate Le Cornu, on 17 th July, 2012. On that occasion the appellant, Mr Gomes who is 25, was before the Court for two offences of driving a motor vehicle holding a telephone, contrary to Article 50(1) of the Road Traffic (Jersey) Law 1956 . 2. The first occasion was on 26 th April of this year, when the appellant was driving west along Route de la Haule , holding a mobile phone in his right hand and looking at the display. He was stopped and warned for a Parish Hall enquiry. The second occasion was on 4 th June when the appellant was driving along Bath Street. He was holding a mobile phone and dropped the phone in his lap when he saw the police officer. However it is fair to say that there was no suggestion he was actually using the phone at that time. The appellant has a previous conviction for a similar offence in 2008 for which he was fined. In addition he has appeared before Parish Hall enquiry and been fined twice for similar offences, one in November 2009 and the other in 2011. He also has a number of other motoring offences which justified the Relief Magistrate's comments that the appellant seemed to have a flagrant disregard for the Road Traffic Law. 3. The appellant represented himself before the Magistrate's Court. He apologised and said that a hands free telephone had been fitted to his car. He said nothing about losing his job if he were disqualified, but a letter from his parents which did refer to that risk was handed up and read by the Relief Magistrate. 4. The appellant was fined £300 for the offence on 26 th April and fined £400 and disqualified from driving for 4 months, for the offence committed on 4 th June. As we have said, the appellant now appeals solely against that period of disqualification. 5. We have been referred to the Magistrate's Court Guidelines . They suggest a fine for the first and second such offences; they suggest that for a third offence the Court may consider disqualification for up to 3 months, and for subsequent offences it may consider disqualification for up to 6 months. The Relief Magistrate clearly considered that the appellant had committed three previous such offences and therefore no doubt felt that he was dealing with an offender falling in the latter category. 6. We remind ourselves of the test on appeal. We are not here to determine the sentence which we ourselves would have passed had we been sitting in the Magistrate's Court. We may only intervene if a sentence is manifestly excessive; however we may also intervene if new information not available before the Magistrate's Court is taken into account. 7. We have heard from the appellant's father

on his behalf. It is clear that the appellant will lose his employment, which is as a driver for a family, if the disqualification of 4 months remains. It is clear from what we have heard that he has a good work record and is a hard working individual. We have also heard that he has recently agreed to buy a flat with his sister and has managed to obtain a mortgage. If he loses his job it is almost certain that the mortgage offer will be withdrawn. Furthermore, he would of course face real difficulties in obtaining new employment because of the very difficult economic climate which the Island, together with other places, now faces. There is a historically high rate of unemployment in the Island. We have also received a letter from the appellant's employer; we have also been advised of the fact that the appellant has got rid of his previous car and has replaced it with a "Smart"; he has installed hands free equipment not only in his car but also in his parents' car, and in the various cars which he drives in relation to his work. 8. Although the letter from the parents to the Relief Magistrate touched upon some of these matters they were not mentioned by the appellant himself. We think therefore that they were not brought strongly to the Relief Magistrate's attention. We believe that the appellant has now learned his lesson. He has received a big fright at the prospect of losing all that he has worked so hard for. We think that in this case justice can be tempered with mercy, and we think that the information which is before us is more fully developed than the information which was before the Relief Magistrate. We believe therefore that we can properly intervene without departing from the proper test on appeal. But it has been a close run thing. 9. In all the circumstances we are prepared to allow the appeal and we reduce the period of disqualification to 1 month. We would add that the appellant must realise that if he were to repeat this offence, or indeed repeat other types of motoring offences, he cannot expect leniency in the future. Authorities Road Traffic (Jersey) Law 1956. Magistrate's Court Guidelines. Page Last Updated: 10 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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