

JERSEY / JUDGMENT

Her Majesty's Attorney General v Alexander Pringle

COURT

Royal Court

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Motoring - re: appeal against sentence.**[2021]JRC031****Royal Court****(Samedi)****2 February 2021**

Before :

J. A. Clyde-Smith, OBE., Esq.,
Commissioner, and Jurats Blampied and Pitman.
Her Majesty's Attorney General
-v-
Alexander Pringle
C. R. Baglin, Esq., for the Crown.
Advocate F. J. Littler for the Appellant.

JUDGMENT

THE commissioner: 1. On 14th January 2021, the Court dismissed the appeal of the Appellant against the sentence imposed upon him by the Magistrate on 9th December 2020 in relation to a number of motoring offences and we now set out our reasons. The facts 2. The facts as presented to the Magistrate's Court by the prosecution were that on Sunday, 8th November at about ten to midnight, PC Freeman observed a Scottish registered black Volvo being driven by the Appellant along the road adjacent to Commercial Buildings from the direction of Mount Bingham. He could hear the vehicle accelerating, and it passed him going at what he felt was in excess of the speed limit for that area. PC Freeman and his fellow officer next saw the same car driving east bound on to the Esplanade from the overpass, again travelling in excess of the speed limit for that area in their view. The car entered the tunnel east bound at a speed which they estimated to be over 50 mph and crossed the double white lines in the tunnel. They made ground on the vehicle and put on the blue light, but the Appellant did not act in response. They then put on the sirens and after what they described as a delayed reaction, the Appellant brought his vehicle to a stop on Green Street. He was the only person in the vehicle and when the door was opened, PC Freeman could

smell intoxicating liquor and described the Appellant's demeanour as being vacant. He was taken to the Police Station where samples were taken, the lowest of which was 93 micrograms of alcohol in his breath. The Appellant did not engage with any of the procedures at the Police Station in terms of questions asked and the intox procedure. 3. CCTV of the area showed what the prosecution described as a prolonged period of driving around town and the ring road and the Appellant going through a red light. The Appellant was charged with four offences and sentenced as follows: Charge Sentence Charge 1 – Drink driving in contravention of Article 28(1)(a) of the Road Traffic (Jersey) Law 1956 9 months' imprisonment and 4 years and 6 months' disqualification. Charge 2 – Driving without a licence in contravention of Article 4(1) of the Road Traffic (Jersey) Law 1956 No separate penalty (licence endorsed) Charge 3 - Failing to conform to a traffic signal in contravention of Article 74(1)(a) of the Road Traffic (Jersey) Law 1956 No separate penalty (licence endorsed) Charge 4 – driving without insurance in contravention of Article 2(1) of the Motor Traffic (Third Party Insurance) (Jersey) Law 1948 2 months' imprisonment, consecutive to charge 1 12 months' disqualification, concurrent to charge 1. The total sentence imposed upon the Appellant was therefore 11 months' imprisonment and a disqualification of 4 years 6 months. Reasons for the sentences imposed 4. In her oral judgment, the Magistrate first set out accurately the mitigation put before the Court by Advocate Littler on behalf of the Appellant. The Magistrate noted that this was the Appellant's third offence of drink driving, the first being before the Leeds Magistrate's Court on 22nd July 2015 and the second before the Glasgow Sheriff's Court on 21st December

2017. The current offence had been committed whilst the Appellant had been disqualified from driving in the UK. In addition to those two earlier driving offences, the Appellant had previous convictions for offences involving violence. Noting that in the past community orders had not stopped the Appellant from reoffending, the Magistrate said she had no confidence that he would complete a community service order. The Magistrate then turned to the sentence to be imposed upon the Appellant, and we set out what she said in full: "So, looking at your offence, the worst offence clearly is the drink driving. Without any aggravating features, without any previous convictions and without the bad driving and so forth, the Court would be looking at a starting point of 5 months but I have to add on the fact that this is not your first, it is not your second, it is your third offence of drink driving and also there was very bad driving around the town for a prolonged period. Those are both seriously aggravating features and my conclusion is that you should serve a term of imprisonment of 9 months for the drink driving. In addition, you were not insured, and this is the most serious form of driving without insurance that the Court looks at and there will be a consecutive sentence of 2 months for driving whilst uninsured. I make no separate penalty for charges 2 and 3. The driving licence and the no insurance are closely connected and I do not consider, although it is a serious matter in the consideration of sentencing as a whole, I do not consider that an additional sentence would be required for that and going through the red light was part of the bad driving that I have taken into account when dealing with the aggravating features of the drink driving. So, there will be no separate penalty for charges 2 and 3 except that your licence will be endorsed in both cases. The

other matter I need to look at is disqualification. The minimum the Court would be looking at is a period of 3 years and we acknowledge that your previous convictions are in a different jurisdiction, or two different jurisdictions, but they are based on very similar legislation, and the court would consider that a minimum of 3 years would be appropriate for somebody who has committed a similar offence but in a different jurisdiction within the past 10 years. But in your case, again it's your third offence of drink driving. There is the bad driving and there is the no insurance. So the disqualification will be 4½ years, and that is raised somewhat because there's the no insurance that has to – that aggravates that as it were, so it's raised for the no insurance but on the no insurance there will be 12 months' disqualification consecutive, sorry concurrent, which in order to make that a sensible sentence instead of adding on another 12 months I have raised the disqualification on the drink driving slightly to reflect the fact that there is the no insurance as well." The test on appeal 5. It is well established that the Court will not interfere with a sentence imposed by the Magistrate, unless it is one which is not justified by law, or the sentence was passed on the wrong factual basis, or some matter had been improperly taken into account or left out of account, or there was some fresh matter which ought to be taken into account, or whether the sentence was wrong in principle or manifestly excessive. In particular, it is not the function of the Royal Court to tinker with sentences which were within the range open to the sentencing court, simply because the Appeal Court might itself have fixed a lower term of imprisonment. Grounds of appeal 6. We take each of the grounds of appeal presented with great clarity by Advocate Littler and the Court's response thereto in turn. Ground 1 The first ground of appeal was that the sentence of nine months for the drink driving charge was manifestly excessive. Drink driving charges attract a maximum sentence of imprisonment of twelve months (Article 28(1) of the Road Traffic (Jersey) Law 1956 ("the Road Traffic Law")). The Appellant's level of alcohol of 93 micrograms was just under the midpoint of band D in the Magistrate's Court Sentencing Guidelines ("the Guidelines"), with the upper band, E, being for readings of 105 micrograms and higher. The Appellant had no previous convictions under the Road Traffic Law, albeit that he had convictions in England and Scotland. He had pleaded guilty at the earliest opportunity, and whilst the Magistrate confirmed that she had taken into account, inter alia, the guilty plea, the Social Enquiry Report (which outlined an impressive employment record, notwithstanding a difficult start in life) and mitigation submitted by Advocate Littler, that had not been reflected in the sentence of nine months. No injury or damage had been caused and bearing in mind the mitigation, a sentence of between five and six months would have been appropriate. 7. Advocate Littler referred to the case of AG v Le Goff

[2020] JRC 033, where the Defendant had driven for a far longer period with a far lower standard of driving. The prosecution case had been advanced on the basis of 54 micrograms, when the alcohol concentration was most likely 104 micrograms, and he received a custodial sentence of three months. 8. She also referred to the case of AG v Henderson-Bell

- [2019] JRC 187, in which the Defendant had a reading of 72 micrograms and had driven his vehicle in close proximity to civilians with the purpose of causing an affray. He received six years' community service (equivalent of three months in custody) for the drink driving charge. 9. However, as Advocate Baglin pointed out, as indeed did the Magistrate in her judgment, the Guidelines provide for a starting point of five months (and a sentencing range of four to six months) for a first-time offender pleading guilty. The Magistrate was correct in having regard to the two previous convictions under very similar legislation (see *Cooper v AG* [2013] JRC 085A); not committing these offences in the same jurisdiction only goes to the mandatory length of the disqualification under the Road Traffic Law.
10. The Guidelines go on to list the following aggravating features, which would increase the starting point, namely the two previous convictions, which as we say are relevant, the unacceptable standard of the Appellant's driving and the location of the driving, namely St Helier.
 11. Advocate Littler's suggestion that the sentence should have been between five and six months does not allow for these aggravating factors and gives too much credit for the mitigation available to the Appellant, bearing in mind that the Guidelines starting point of five months already allows for the guilty plea.
 12. In *AG v Le Goff*, the Court was concerned with what it described as an "extremely severe example of dangerous driving", for which the Defendant who had no previous convictions, was sentenced to twelve months' imprisonment. In *AG v Henderson-Bell*, the Defendant, who had one previous conviction for drink driving eight years before, was charged with affray through the use of his car to threaten and terrify members of the public.
 13. It is fair to say that in sentencing the Court will tend to concentrate on the most serious offence before it which will dictate the length of the sentence that the Defendant will serve, and we do not regard either case, which can be distinguished on their facts, as supporting the submission that the sentence of nine months imposed by the Magistrate was manifestly excessive.
 14. As the Magistrate noted in her judgment, there were seriously aggravating features in this case, and in our view, nine months' imprisonment, whilst at the upper end of the sentencing range open to the Magistrate, was not manifestly excessive. Grounds 2 and 3
 15. We can take the second and third grounds of appeal together, namely that the Magistrate erred in ordering the sentences for the drink driving and driving without insurance to run consecutively, thus offending the totality principle, and failed to explain why a consecutive sentence was imposed.
 16. Advocate Littler submitted that the overall sentence of eleven months was too long and that concurrent sentences should have been imposed, having regard to the fact that this is the first custodial sentence the Appellant has served.

17. She relied on the case of *Kinsella v AG*

[2014] JRC 199, in which the Relief Magistrate had imposed consecutive sentences totalling ten months for offences of drink driving, dangerous driving, taking and driving away and driving without insurance. The Relief Magistrate gave no reasons for the sentences imposed, other than saying they were serious. The Court found that the dangerous driving was the most serious offence, justifying a sentence of imprisonment of six months, but that the total of ten months was too high. However, the absence of any reasoning from the Relief Magistrate made it impossible for the Court to know whether he considered the totality or not, and for that reason, the Court felt able to allow the appeal and substitute alternative sentences, concluding at paragraph 22: “22. When one has regard to the charges in this case, it seems to us to be clear that charges 6 and 7 for taking and driving away and driving without insurance do indeed arise out of the same transaction in the sense that the fact of driving without lawful authority will always mean, or almost always mean, that the driver was driving without a policy of insurance in respect of third party risks. Accordingly, we think that concurrent sentences on counts 6 and 7 would have been appropriate. In this case, having regard to our views about the totality of the offending and in particular to the fact that this is the first custodial sentence which the appellant will have served, we think that the drunken driving and dangerous driving charges could be reflected by a concurrent custodial sentence – as indeed the Relief Magistrate seems to have concluded by imposing concurrent disqualifications.”

18. In our view, the case of *Kinsella* is in no way comparable. In that case, the Relief Magistrate had given no reasons at all for the sentences imposed, other than to say they were serious. Quoting from paragraph 17 of the judgment: “17. We think however that Advocate Jones was on much stronger ground in complaining that the Relief Magistrate did not set out his reasons for sentence. We recognise of course that the number of cases which come before the Magistrate’s Court is such that Magistrates are not expected to issue judgments of the kind which are anticipated in this Court. On the other hand, to send a defendant to prison for 10 months without giving him any explanation as to why that sentence is being imposed, other than that the offences were serious, seems to us to be at risk of leaving the defendant with a legitimate sense of grievance, and indeed a lack of understanding as to the principles which had governed the sentences which were imposed. We ourselves have no understanding why the Relief Magistrate chose consecutive custodial sentences but an apparently concurrent disqualification. Furthermore, although we know that the Relief Magistrate considered the consecutive/concurrent issue, we do not know if he applied his mind to the totality principle. It is not enough in a case involving the deprivation of liberty for the Crown to assert that the sentencing court was extremely experienced and must have applied the right principles. Even recognising the undoubted experience of the Relief Magistrate, we do not think that it is a proper assumption to make, not because we are satisfied the sentencing court applied the wrong principles, but simply because we do not know whether it applied the right principles and if so how it applied them.”

19. In this case, and by way of comparison, the Magistrate gave a detailed oral judgment occupying some two and a half pages of transcript in which she first set out all of the mitigation available to the Appellant, explained why community service was not an option and then giving reasons for the sentences imposed. She explained why the sentence for the driving whilst uninsured was consecutive, namely that it was the most serious form of that offence that came before the Court. Looking at the Guidelines, this offence came within Category C, namely, “Highly negligent as to whether insured or deliberately driving whilst uninsured”, with a starting point of two months’ imprisonment and a sentencing range from a fine of £2,500 to imprisonment of six months.
20. Whilst we accept that it is often appropriate for offences arising out of the same transaction to attract concurrent sentences, there is no rule to that effect, and it is not wrong in principle for the Magistrate to have marked the serious nature of this particular offence by way of a consecutive sentence, provided that was explained, which it was. As the Court said in *Skopans v AG* [2011] JRC 210 at paragraph 9: “9. Where several offences arising out of the same circumstances occur, the Court has a choice as to whether to proceed by way of concurrent or consecutive sentences. In many cases it will impose concurrent sentences. However, when it does this, it is perfectly proper to take into account, as an aggravating factor, the existence of the other offences and therefore increase the sentence on, usually, the most serious offence beyond that which it would have been if that offence had stood alone; otherwise an offender receives no greater punishment for committing several offences than he would for committing only the most serious offence. Alternatively, the Court may impose consecutive sentences for each offence. In those circumstances the Court should not treat the other offences as an aggravating factor increasing the individual sentences, as otherwise the offender will be punished twice for the same conduct. In the case of consecutive sentences, the court must look at its provisional decision and then apply the totality principle in order to see whether the total reflects the overall offending; and it may well end up reducing one or more the individual sentences so as to achieve the right total result.”
21. As to totality, it is true that the Magistrate did not use that term expressly in her oral judgment but having explained that a sentence of two months for the driving whilst uninsured would be imposed consecutive to the sentence of nine months for the drink driving charge, self-evidently this gave rise to a total sentence of eleven months’ imprisonment for those two offences. She then went on to consider the sentence “as a whole” when deciding not to impose any separate penalty for the driving without a licence and failing to conform to a traffic signal. In our view, it is clear that the Magistrate did have regard to the totality principle.
22. It might be said that having made the sentences for the drink driving and driving whilst uninsured consecutive, it was inconsistent for the Magistrate to then impose concurrent periods of disqualification. However, the imposition of the sentence for the offence and the period of disqualification are separate exercises under the Road Traffic Law and there is no

principle that if consecutive sentences are imposed for an offence, then the disqualification must also be consecutive. In this case, the Magistrate explained that rather than impose a consecutive disqualification of twelve months, she had increased the period of disqualification for the drink driving offence to reflect the driving whilst uninsured, in order to arrive at “a sensible sentence” on disqualification overall. In this she was following the approach of the Court in *Skopans v AG*.

23. It is manifest that the Magistrate considered the totality of the disqualifications imposed and unlike the case of *Kinsella* did explain why she imposed concurrent disqualifications.
- Ground 4
24. The fourth ground of appeal is that the Magistrate erred in considering the subject matter of charge 3, failing to conform to a traffic signal, as an aggravating factor for the drink driving offence, on the basis that charge 3 is punishable by a fine alone, pursuant to Article 74(1)(a) of the Road Traffic Law, with a maximum penalty of a level 2 fine (£1,000). The Appellant's offending in this respect fell within the least serious category in the Guidelines.
25. In our view, there is no merit in this ground of appeal. In considering the drink driving offence, the Magistrate was perfectly entitled to regard the standard of driving as an aggravating factor, as the Guidelines expressly state, which will go to increasing the starting point of that offence. The fact that failing to conform to a traffic signal (going through a red light) is itself punishable by way of a fine is irrelevant. The Magistrate explained that going through the red light was part of the bad driving which she had taken into account when dealing with the aggravating features of the drink driving and no separate penalty was therefore imposed. Ground 5
26. The fifth ground of appeal is that the Magistrate took into account an irrelevant and unsupported factor for the purposes of sentencing the Appellant for the drink driving, namely that he had been driving for a “prolonged” period. During the sentencing hearing, the prosecution informed the Magistrate that there was evidence of the Appellant driving from approximately 23:50 to 00:07, namely some 17 minutes. The prosecution did not state that the Appellant was driving continuously within that 17-minute period and there was no evidence to support that. The Magistrate erred in finding that this was a “seriously aggravating feature” for the following reasons: (i) The period of 17 minutes was stated to be an approximate period only. (ii) 17 minutes was not a prolonged period. (iii) The Magistrate could not have known whether the Appellant was driving continuously within that 17-minute period. (iv) The route travelled outlined by the prosecution was a short distance.
27. The word “prolonged” had been used by the prosecution in describing the Appellant's driving. The Magistrate asked the question “How long is prolonged” (page 5 of the transcript) and that information was provided to her before she retired to consider sentence namely that the Appellant had first been seen driving at 11:50 and on the last occasion at 00:07. He was stopped after that in Green Street.

28. As Crown Advocate Baglin pointed out, the Appellant had pleaded guilty to these offences, and was to be sentenced on the factual basis put forward by the prosecution, namely that he had been driving continuously during this period. That factual basis had not been challenged by the Appellant. Indeed, the Appellant gave no explanation at all as to his driving that night, either to the Probation Officer or in his letter of remorse to the Court or to the Magistrate, through his counsel. In our view, the inference that he was driving continuously during this period was a reasonable one for the prosecution to draw and for the Magistrate to accept.
29. The use of the word “prolonged” has to be construed in context namely of a person driving a car under the influence of alcohol. According to published figures, a car travelling at 30 mph will cover half a mile in one minute. In 17 minutes, a car travelling at that speed will cover some 8.5 miles. Bearing in mind the danger a car driven by a person under the influence of alcohol presents to other road users and to the public, exposure to such danger for 17 minutes can justifiably be described as “prolonged”.
30. Advocate Littler also highlighted this exchange between the prosecution and the Magistrate: “Magistrate “So arrived in Jersey when?” Prosecution “There was a Condor ticket Ma’am – a British Airways stub dated 1st November, and a Condor ferries ticket in the name of a Peter Devine dated 28th September, 2020.” Magistrate “So, are you saying that one or other of those relates to Mr Pringle.” Prosecution “Ma’am I don’t believe from the facts that I have here that was established but it was suspected he’d come from London on the BA flight.” Magistrate “On 1st November? And this is 9th November? Prosecution “Yes Ma’am, but I don’t believe that was established as no charges followed in that regard.”
31. When delivering her judgment, the Magistrate then said this: “... you have ignored the, effectively circumvented the court order in Glasgow because you have driven here without a licence, so although you are not disqualified here you cannot have a licence here because you don’t have a licence to exchange. ... So, in my view, I wouldn’t have any confidence in any completion of a Community Order in any event ...” (Her emphasis added)
32. Advocate Littler submitted that the date and method of the Appellant’s arrival in the Island had no relevance to the charges or to sentencing, and it can be inferred that the Magistrate made the assumption that the Appellant had driven in Glasgow and/or in Island prior to the period of offending, and that such assumption influenced her when sentencing the Appellant for the drink driving.
33. In our view, the exchange does not bear the interpretation placed upon it by Advocate Littler. The Magistrate has simply asked by way of background information when the Appellant had arrived in Jersey and that was the reply she received. As to her sentencing remarks, she was concerned at that point with whether community service was an option and she expressed the view that by driving in Jersey the Appellant had effectively circumvented the penalty imposed upon him by the court in Glasgow, but the reference to his “driving here”, which in our view meant the driving in Jersey with which he had been

charged, does not support the allegation that the Magistrate had improperly taking into account offending for which the Appellant had not been charged. Ground 6

34. The final ground of appeal is that the Magistrate erred in taking into consideration the subject matter of driving whilst uninsured when imposing a disqualification in respect of the drink driving in circumstances where a separate disqualification order is imposed for the driving whilst uninsured, and as such, the disqualification order imposed for the drink driving was manifestly excessive and offended the principle of totality.
35. We have to some extent already addressed this ground in that it was open to the Magistrate to take into consideration the subject matter of the driving without insurance, when imposing the disqualification order in respect of the drink driving. As to the duration of the disqualification under the drink driving charge, the Guidelines indicates a disqualification of 24-30 months for a first offence and 42 months plus for a second offence in ten years.
36. In this case, the Magistrate imposed a disqualification of 54 months. Bearing in mind that this was the Appellant's third conviction and he was driving whilst uninsured, we do not regard a disqualification of 54 months or 4 years and 6 months as manifestly excessive.

Conclusion

37. In conclusion: (i) The overall sentence here of eleven months' imprisonment, whilst at the higher end of the range open to the Magistrate, was not manifestly excessive and did not offend the totality principle. (ii) The Magistrate had given reasons for the sentences imposed and in particular, for the imposition of consecutive sentences and concurrent disqualifications. (iii) There were no matters which the Magistrate had improperly taken into account.
38. For all these reasons, the appeal was dismissed. Authorities Road Traffic (Jersey) Law 1956 Motor Traffic (Third Party Insurance) (Jersey) Law 1948 Road Traffic (Jersey) Law 1956 Magistrate's Court Sentencing Guidelines AG v Le Goff [2020] JRC 033 AG v Henderson-Bell [2019] JRC 187 Cooper v AG [2013] JRC 085A Kinsella v AG [2014] JRC 199 Skopans v AG [2011] JRC 210

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