

JERSEY / JUDGMENT

Le Clech v AG [2002] JRC 226 (02 December 2002)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application for leave to appeal out of time against a sentence imposed by the Assistant Magistrate on the 17 th April, 2002 for one count of allowing himself to be carried in motor vehicle, knowing that it had been taken without the consent of the owner, or other lawful authority, contrary to Article 28 of the Road Traffic (Jersey) Law (1956). The applicant was sentenced to 70 hours' community service and disqualified from holding a driving licence for eighteen months. 2. The facts, briefly, were as follows: on the evening of 8 th March, 2002, the applicant and his co-accused, John O'Connor, had been drinking. In the early hours of the morning of 9 th March they were dropped off by a taxi at St. Peter's village. They decided to walk to Plemont . On the way they came to the Farmer's Inn at St. Ouen . They decided to find a car to sleep in. They found a Vauxhall Nova. The appellant sat in the passenger seat and O'Connor sat in the driver's seat. O'Connor then noticed that the keys were in the ignition. They decided, together, to drive back to town - O'Connor drove. On the way the car crashed when O'Connor lost control. Both accused ran off when approached by an irate householder from nearby. The applicant was arrested at his home at 8.40 that morning. He admitted his part in the offence and agreed that it was a joint decision by the parties to drive off in the car from the Farmer's Inn. 3. The applicant and his co-accused appeared before the Assistant Magistrate on 17 h April, 2002. The tapes have been wiped in view of the lapse of time since then, so that we do not have a record of what was said. O'Connor was up for a number of offences, namely failing to stop and report an accident, failing to provide a specimen of breath, driving without insurance, driving without a licence and careless driving, as well as taking a motor vehicle without consent. He was sentenced to a total of 70 hours' community service and disqualified from driving for eighteen months. The appellant, as we have said, was before the Court for the offence of allowing himself to be carried and he was given the same sentence. He was not legally represented before the Assistant Magistrate. 4. We must explain, briefly, the circumstances in which it is now sought to appeal out of time. The applicant breached the community service order on two occasions. The second time, he appeared before the Magistrate on 25 th September, 2002. Miss Juste was the duty Advocate. The Magistrate expressed concern that the sentence of disqualification might be unlawful. The basis for this was as follows: the First Schedule to the 1956 Law lists those offences for which disqualification may be imposed. The entry in respect of Article 28 reads: "Article 28 - taking a

vehicle without owner's consent or authority." Article 28, in fact, includes a number of different offences: taking and driving away; driving a vehicle knowing that it has been taken without consent and; allowing oneself to be carried in a vehicle knowing it has been taken without consent. 5. The Magistrate was concerned that it was only the first of these offences that was described in the First Schedule and therefore attracted a power of discretionary disqualification. He advised that consideration be given to seeking leave to appeal out of time, on the basis that the sentence was unlawful. 6. In fact, having had the opportunity of considering the matter, Mr Benest, on behalf of the applicant, does not contend that the disqualification was unlawful. In this, he is clearly right. The description of each offence listed in the First Schedule is, in most cases, taken from the heading to the relevant Article in the body of the Law. So, for example, Article 15 is described in the First Schedule as careless driving because that is the heading of Article 15 itself, notwithstanding that Article 15, in fact, creates more than one offence, namely driving without due care and attention and driving without reasonable consideration for others. In our judgment, it is clear that the First Schedule applies to all offences created by the relevant Article, which is listed in the Schedule. 7. We should also comment briefly on the Magistrate's decision on 25th September. Despite the fact that the appellant had breached the community service order twice, the Magistrate did not impose a prison sentence for the breaches. He concluded that the Assistant Magistrate had been wrong to impose community service for the offence by the applicant of allowing himself to be carried in a motor vehicle knowing it to be taken without consent. The Magistrate concluded that the correct sentence would have been a fine of £250. He therefore, after allowance for the community service carried out, imposed a fine of £150. 8. It is important to state that we have not heard full argument on this and it is not relevant for this appeal. However, we cannot let this pass without comment. In our judgment, when a court of parallel jurisdiction is called upon to consider breach of community service imposed by another division of that court, it is not the function of the parallel court to review the correctness of the original sentence. That is for a court of appeal. If the sentence is not appealed, it stands. If the sentence is breached, the normal consequences should follow. 9. It is not the rôle of the Court considering the breach to review the correctness of the original sentence. The result of what the Magistrate did in the present case is that the applicant flouted the order of the Court twice by failing to carry out community service and yet managed to achieve a reduction in his sentence from another Magistrate by doing so. All this without ever appealing against the original sentence. We can only say that the applicant can consider himself to be very fortunate. 10. As we have said, the reason which prompted the application for leave to appeal is no longer relevant. But, Mr Benest contends that the period of disqualification was manifestly excessive on three grounds and he put these, if we may say so, with commendable clarity and conciseness. First, he says that the applicant was not charged jointly with taking and driving away; he was, in fact, charged with allowing himself to be carried. The Court should, therefore, have reflected this different charge in the sentence which it imposed, as compared with that imposed on the co-accused. 11. Secondly, he pointed out, as we have already said, that the co-accused, O'Connor, was up for a number of offences and yet the same aggregate sentence was imposed on him as was imposed on the applicant. He says, therefore, that this points in favour of a lesser sentence being the appropriate sentence for the applicant. 12. Thirdly, he submits that the sentence of

disqualification of eighteen months was significantly out of line with the guidelines issued by the Magistrate's Court, which provide that for a first offence of taking and driving away, or allowing oneself to be carried, a six months' disqualification is the recommended sentence. 13. The hearing before the Magistrate on 25 th September can be seen as something of a 'red herring' in the context of the application for leave to appeal out of time. What we are faced with is a situation where an accused, who was not legally represented before the Magistrate's Court, has been advised, after the expiry of the time for appealing that he may have grounds for appeal, on the basis that the sentence is manifestly excessive. The sentence was imposed on 17 th April, 2002. The application for leave to appeal out of time was made on 31 st October, in other words some six and a half months, instead of the eight days allowed by law. Indeed, it took the applicant some five weeks to apply for leave to appeal out of time, even after the comments of the Magistrate on 25 th September. 14. It is clear that an extension of time in which to appeal 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 the 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. 15. In this case no grounds were given for the delay, other than that the applicant was not legally represented and did not realise that he had an arguable case that the disqualification period was too long, until the September hearing. But, of course, the Court also has regard to the merits of the appeal when considering whether to grant leave out of time. The stronger the argument that a sentence is manifestly excessive, the greater the argument for allowing an extension of time. 16. We have carefully considered Mr Benest's points. It is clearly properly arguable that a lesser period of disqualification would have been appropriate. But the fact remains that this was a joint venture. It was purely fortuitous as to who was in the driving seat. In our judgment, there is no reason to distinguish between the offence of taking and driving away, committed by O'Connor, and that of allowing himself to be carried, by the applicant. It is to be noted that the same maximum sentence is applicable for both offences. 17. It is, of course, true that in many cases the offence of allowing oneself to be carried will be less serious; for example, where, after the car has been stolen, someone is picked up and allows him or herself to be carried. But, in many cases where there is in reality a joint venture, even if it is not charged as such, there is, in our judgment, no distinction between the offences and we consider that to be the case here. It is true that Mr O'Connor was up for more offences and it is true that the sentence was in excess of the guidelines, but, as has been repeatedly said, those are only guidelines and they are not to be regarded as tram lines. 18. In our judgment, the grounds of appeal put forward by Mr Benest are not sufficiently strong to overcome the delay for leave to appeal in this case. It is not a case of an applicant being a few days, or even a few weeks out of time whilst legal advice is taken on whether a sentence was too harsh, when he was unrepresented. The Court will then often grant an extension of time in those circumstances. In this case the applicant is some six months out of time. No substantial grounds have been shown and the argument that the sentence is manifestly excessive is not sufficiently powerful that we should allow an appeal out of time in these circumstances. We therefore refuse the applicant leave to appeal out of time. *Authorities* Perret - v- AG (10 th October 1994) Jersey Unreported. *Pipon -v- AG* (16 th August 1999) Jersey Unreported; [1999/143] Magistrate's Court Guideline Penalties (September 1999). Magistrate's Court

(Miscellaneous Provisions) (Jersey) Law 1949, as amended: Article 15. Road Traffic (Jersey) Law 1956, as amended: Articles 8; 9; 28; First Schedule. Wilkinson's Road Traffic Offences 1/1993-1/1994. R -v- Reed (1975) RTR 313. R -v- Saunders (1975) RTR 315. Page Last Updated: 20 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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