

JERSEY / JUDGMENT

Louis -v- AG [2013] JRC 257A (20 December 2013)

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JUDGMENT

THE Commissioner: 1. This is an appeal against sentence only under Article 17(1)(a) of the Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949 ("the 1949 Law"), following a hearing in the Magistrate's Court on 4 th November, 2013, when the Magistrate imposed a 10 month 2 week period of imprisonment upon the appellant following his entering of guilty pleas to:- (i) Charge 1

- driving a motor vehicle with an alcohol concentration above the prescribed limit, contrary to Article 28(1)(a) of the Road Traffic (Jersey) Law 1956 (the "1956 Law"), the drink driving offence. The appellant had a reading of 93 micrograms in 100 millilitres. The Magistrate imposed a sentence of 4 months' imprisonment and disqualified the appellant from driving for 4 years and required him to retake the Jersey test; (ii) Charge 2 - driving whilst disqualified, contrary to Article 15(4)(b) of the Road Traffic (Jersey) Law 1956 . The Magistrate imposed a sentence of 6 months' imprisonment, consecutive to Charge 1, with the same disqualification period, concurrent to Charge 1, and retaking the Jersey test. (iii) Charge 3 - driving without third party insurance, contrary to Article 2(1) of the Motor Traffic (Third Party Insurance)(Jersey) Law 1948 ("the 1948 Law"). The Magistrate imposed a sentence of 6 months' imprisonment, concurrent to Charges 1 and 2 with the same disqualification period concurrent with Charges 1 and 2, and retaking the Jersey test. (iv) Charge 4 - contempt of Court. The Magistrate imposed a sentence of 2 weeks' imprisonment consecutive to Charges 1-3 inclusive. The appellant has been in custody since the th November, 2013. The legal test to be applied 2. The grounds for allowing an appeal against sentence are well-established. In Harrison-v-AG

[2004] JLR 111 the Court of Appeal adopted the resume in Archbold: Criminal Pleading Evidence and Practice 2003 Edition at paragraphs 7-136 at 966:- "In broad terms, it is submitted that the court will interfere (a) where the sentence is not justified by law, in which case it will interfere not as a matter of discretion but of law; (b) where sentence has been passed on the wrong factual basis; (c) where some matter has been improperly taken into account or there is some fresh matter to be taken into account; or (d) where the sentence was wrong in principle or manifestly excessive." 3. The appellate courts of this Island will not

interfere with sentences that are not manifestly excessive and are within the powers of the sentencing court. The authority for that is Morgan and Schlandt-v-AG

[2001] JLR 225 :- "It is not the function of this court to tinker with sentences which were well within the range open to the sentencing court simply because we might ourselves have fixed a lower term of imprisonment." 4. The approach adopted by the Courts to appeals against sentence were repeated recently in Barette-v-AG

[2011] JCA 105 :- "The principles which apply and are followed in Jersey are set out in the judgments in Att. Gen. v Sampson

(1965) JJ at 499 and Harrison v AG

[2004] JLR 111 , noting that "the Court will not alter a sentence merely because members of the Court might have passed a somewhat different sentence".

Facts

5. The brief facts in relation to the driving offences are that the appellant had driven his nephew, with whom he was working, and who had a twisted ankle, in his van from St Clements to the A&E Department at the General hospital. Having dropped his nephew off and having parked in a parking space near to the hospital, he went into the Parade Gardens and consumed alcohol. He then went back to the van in order, he says, to collect his jumper and has no recollection of what was then witnessed by two police officers, that is of him pulling out of his parking space into the traffic, stopping and then reversing back into the same parking space. He was found by the police officers to be drunk. 6. In terms of the contempt charge, on 25 th September the appellant attended Court at 10am and when his case was not dealt with first he left the Court and although he briefly returned 15 minutes later he went off and consumed alcohol and did not surrender to the Court when called. Grounds of Appeal 7. In terms of the appellant's grounds of appeal he has represented himself today and his submission was that, overall, he felt that the sentence imposed was unduly harsh. He had no other specific points to raise with us. We asked Miss Hollywood whether in these circumstances there were any matters which she thought might have been raised on his behalf if she were representing the appellant and she did raise with us the possibility that the Magistrate may not have fully taken into account the appellant's guilty plea in relation to the contempt charge, which might have reduced the sentence of 2 weeks, which is the starting point for such offences under the Magistrate Court Guidelines , by one third. Decision 8. When passing sentence in respect of the charges faced by the appellant, the Magistrate clearly set out her reasoning, which can be found in the transcripts at pages 39-41. To place the Magistrate's decision in context it is the fact that the appellant has an appalling relevant record. In summary, and taking into account these offences, the defendant was disqualified from driving on 18 th May, 2011 for 3 years, and in fact there were two offences on that occasion, or very close to that occasion. Thus the current offending occurred whilst he was still disqualified, and if you take into account these

offences this is the sixth time that he has driven whilst disqualified within the past 10 years. It was the eighth time he has driven without insurance within 10 years and the fourth time he has driven with excess alcohol. Notably, according to the Social Enquiry Report, there is no prospect of the appellant ending his drinking. In fact, as Miss Hollywood pointed out to us, the Magistrate underestimated the appellant's record. The Magistrate considered the available mitigation, that is the early guilty plea, all the points made by the appellant's advocate in mitigation and the Social Enquiry Report, and then considered the record and when explaining her decision noted that these were serious offences and that there were a number of aggravating factors which can be set out as follows:- (i) He was driving with an excess alcohol level of 93 micrograms in 100 millilitres; (ii) The appellant was a disqualified driver at the time of the offending; (iii) There was no insurance; (iv) This was the fifth time, (according to the Magistrate), that the appellant had driven with no insurance; in fact we know it was greater than that; (v) This was the fourth time the appellant had driven whilst disqualified, (again we know that that was an underestimation); (vi) This was the second time in 9 years the appellant had driven with excess alcohol; (vii) There was no prospect of the appellant stopping drinking, as made clear in the Social Enquiry Report; and (viii) The appellant had been imprisoned for similar offences but continues to offend. 9. Miss Hollywood has taken us through the Magistrate's Court Guidelines and the maximum sentences for these offences very carefully and it is clear that all of the sentences imposed by the Magistrate are consistent with those Guidelines. 10. Turning to the totality principle, Harris-v-AG

[2001] JL:R 362 also refers to the case of AG-v-McIntyre 1999/11, in which the totality principle was addressed obiter and it was stated as follows:- "the totality principle cannot be defined in so restricted a way. The principle is no more than a statement of the obvious commonsense proposition that the sentencer has a duty to look at the totality of the consecutive sentences and be satisfied that the cumulative effect of those sentences is not excessive in relation to the conduct of the accused or his particular circumstances." Ordinarily consecutive sentences are passed if the offences are unrelated, although in exceptional circumstances they can be made to run concurrently. The authority for that is AG-v-Frazer

[2003] JLR N 55. In this case therefore the sentence for contempt was correctly imposed on a consecutive basis. As to the driving whilst disqualified this did arise out of the same incident as the drink driving offence and would ordinarily be dealt with concurrently, but as Miss Hollywood pointed out the appellant had only in 2011 been convicted in fact twice of driving whilst disqualified. We think that this amply justified the Magistrate in imposing a consecutive sentence. Furthermore on close study of the transcripts it would seem that the Magistrate intended the third charge, driving without insurance, to run concurrently with the second charge but consecutive to Charge 1, and there is authority for treating driving without insurance on a consecutive basis, that is the case of AG-v-Bailey

- [2009] JRC 007 , so the result would have been the same. We agree with Miss Hollywood that taking into account the repeat offending of the appellant of this type of offence, and his continuing flouting of Court Orders, the overall sentence of 10 months and 2 weeks is far from excessive and could even be considered as leaning towards a lenient sentence. 11. In conclusion, therefore, we agree with Miss Hollywood that the sentence imposed was justified by law, passed on the correct factual basis, no matters were improperly taken into account, nor were fresh matters to consider, and moreover the sentence was not manifestly excessive, wrong in principle or otherwise defective. Furthermore we agree that the sentence does not offend against the totality principle and that it was one that a reasonable Magistrate could have reached in all the circumstances. 12. Accordingly, for all of those reasons, we dismiss the appeal. Authorities Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949, as amended. Road Traffic (Jersey) Law 1956. Harrison-v-AG
- [2004] JLR 111 . Archbold: Criminal Pleading Evidence and Practice 2003 Edition. Morgan and Schlandt-v-AG
- [2001] JLR 225 . Barrett-v-AG
- [2011] JCA 105 . Magistrate Court Guidelines. Harris-v-AG
- [2001] JLR 362 . AG-v-McIntyre 1999/11. AG-v-Frazer
- [2003] JLR N 55. AG-v-Bailey
- [2009] JRC 077 . Page Last Updated: 16 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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