

JERSEY / JUDGMENT

Mildren v AG [2019] JRC 009A (31 January 2019)

[2019] JRC 009A

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JUDGMENT

THE commissioner: 1. This is an appeal by way of case stated against two aspects of orders made by the Relief Magistrate, Advocate Fitz, on 14 th September, 2018. The Crown do not oppose the appeal and I can therefore be brief. 2. The appeal is out of time but that is because the error which I am about to refer to was not discovered until after the expiry of the eight day period for appealing. I therefore consider it reasonable to extend time, the Appellant having moved promptly once the error was discovered; so I therefore grant leave to appeal out of time. 3. The Appellant appeared before the Relief Magistrate on 14 th September, 2018 to be sentenced on four charges, to which he had pleaded guilty at an earlier hearing. One of the offences was that of driving whilst disqualified on 12 th May, 2018. The basis for the charge was the criminal record produced to the Relief Magistrate at the hearing. This showed that on 3 rd April, 2007 for an offence of taking and driving away, contrary to Article 53 of the Road Traffic (Jersey) Law 1956 , the Appellant had been disqualified from driving for 6 months, and that that disqualification was to continue until he retook and passed the relevant driving test. 4. It was agreed that he had not in fact retaken his driving test since 2007 with the result that he was assumed to remain disqualified as at May 2018. Subsequently, it has transpired that the Magistrate's Court record shows that at the hearing on 3 rd April 2007 he was not in fact ordered to re-take his driving test. That is not surprising as the power to order a person to retake a driving test, which is conferred by Article 35 of the 1956 Law, does not include offences of taking and driving away contrary to Article 53. It follows that the criminal record which was produced to the Relief Magistrate in September and relied upon was incorrect. 5. It follows that by the 12 th May, 2018, the period of disqualification ordered on 3 rd April, 2007, had long since expired. The Appellant was therefore not disqualified from driving as at 12 th May 2018 and he could not therefore be guilty of driving whilst disqualified. In those circumstances, with the agreement of all parties, I quash the conviction on that charge and the resulting sentence of 70 hours community service. 6. The second aspect relates to a sentence of 2 months disqualification which the Relief Magistrate imposed on the charge of driving without insurance. The difficulty arises because she ordered that period to run consecutively to a disqualification for 16 months which she had imposed on the same occasion for a charge of driving with excess alcohol. 7. The Crown concedes that the 1956 Law does not allow driving disqualification orders to commence at some future date. It was therefore outside

the power of the Magistrate's Court to order the disqualification on the charge of driving without insurance to run consecutively to the period imposed for driving with excess alcohol; they had to run concurrently. 8. I therefore, quash the sentence of 2 months disqualification on the charge of driving without insurance and remit that matter to the Magistrate's Court for re-sentencing. I order costs in favour of the Appellant. Authorities Road Traffic (Jersey) Law 1956. Page Last Updated: 06 Feb 2019 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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