

JERSEY / JUDGMENT

O'Donnell -v- Ricketts [2008]

JRC 024 (18 February 2008)

[2008] JRC 024

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JUDGMENT

THE commissioner: 1. On 28 th November, 2007, the defendant pleaded guilty to a charge of driving a motor vehicle whilst he was unfit through drink or drugs contrary to Article 27 of the Road Traffic (Jersey) Law 1956. He was sentenced to 70 hours community service and disqualified from driving for 2 years and until he passed a test. 2. In disqualifying the defendant for two years the Assistant Magistrate overlooked the fact that the defendant had a previous conviction for the same offence on 28 th April, 2005. This is relevant in that Article 27(5) of the 1956 Law provides as follows:- "A person convicted of a motoring offence under this Article shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, in the case of a first offence, be disqualified for a period of 12 months and in the case of a second or subsequent offence committed within 10 years of the last such offence, for a period of 3 years, for holding or obtaining a licence." Accordingly the defendant should have been disqualified for a minimum period of 3 years, there being no "special reasons" to order otherwise. 3. On 29 th November, 2007, Mr Laurence O'Donnell, who is the legal adviser to the Police and employed within the Law Officer's Department, executed an application for the Statement of a Case by the Magistrate in the following terms: "I, the undersigned Laurence O'Donnell being a party to the above mentioned proceeding and aggrieved by the decision of the Magistrate to disqualify the defendant from driving for two years when the statutory period is three years in the above-mentioned proceeding as being wrong in law [or as being in excess of jurisdiction], hereby, pursuant to paragraph (1) of Article 18 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949 , as amended, apply to you to state a case for the opinion thereon of the Royal Court on the question of law [or jurisdiction] involved." 4. The form used is obviously out of date in that it is Article 21 of the 1949 Law and not Article 18 that the application is made under and of course the name of the law has been changed from "Police Court" to "Magistrate's Court" as long ago as 1996. More significantly is the question of whether Mr O'Donnell, who was a party to the proceedings, was a person aggrieved for the purposes of Article 21 of the 1956 Law and therefore had sufficient locus to make the application. Advocate Hollywood, for Mr O'Donnell, has referred us to the decision of Le G -v- AG

[2004] JLR 204 where this issue was considered and quoting from the Judgment of Birt, Deputy Bailiff at para 25:- "This wording suggests two categories of person who may appeal by way of case stated. The first category is a party to the proceedings and the second is a person aggrieved. The second alternative must go beyond someone who was a party. 26. Furthermore, this interpretation is supported by the fact that the equivalent provision in England (where the wording is, for all practical purposes, identical) has been held to confer a right on a person other than the prosecution or the particular defendant to appeal by way of case stated. Thus Taylor on Appeals has the following passage on this point (paras 3-018 - 3-019, at 54 (2000)): "Any person who was a party This phrase makes it clear that both the prosecution and defence have a right of appeal by way of case stated. This is regardless of whether the applicant was unsuccessful, or is aggrieved at the partial nature of his success. A person 'aggrieved' This phrase established that any other person or party who is 'aggrieved' by the decision in question has a right of appeal by way of case stated. The term 'person aggrieved' appears to have been equated generally by the courts with the test of 'sufficient interest' in the judicial review sphere. In Attorney General of Gambia -v- N'Jie the Judicial Committee of the Privy Council stated: "The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things that do not concern him; but they do include a person"". 5. Mr O'Donnell is the legal adviser to the police and employed within the Law Officers' Department and was the person who appeared for the Constable of St Peter, who was the prosecuting person in these proceedings. We are satisfied that he does have a sufficient interest to seek a case stated. 6. Although the form used was outdated we accept that Mr O'Donnell has complied with the essential requirements of Article 21 of the 1949 Law. However, Advocate Hollywood has confirmed that this form will be updated as a matter of urgency and in particular will distinguish between the two categories of persons who may apply under it. 7. The powers of this Court on an application of this kind are clear. Article 22(1) of the 1949 Law provides as follows:- "On an appeal by case stated under Article 21, the Royal Court shall hear and determine the question or questions of law arising on the case and may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the Magistrate's Court, with its opinion thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as may seem fit." 8. This was a straight forward mistake by the Assistant Magistrate. He had no discretion in the matter and we do therefore substitute a period of disqualification from driving of 3 years from 31 st October, 2007, and until the test is passed. Authorities Road Traffic (Jersey) Law 1956. Le G -v- AG

[2004] JLR 204 . Police Court (Miscellaneous Provisions) (Jersey) Law 1949. Page Last Updated: 22 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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