

JERSEY / JUDGMENT

Oliver v AG [2001] JRC 44 (21 February 2001)

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JUDGMENT

THE DEPUTY BAILIFF: 1. On 3rd January, 2001, the appellant was sentenced for three offences to which she had pleaded guilty. For the offence of driving whilst disqualified she was sentenced to 3 weeks' imprisonment; for driving without insurance, which was linked with the first offence, she was sentenced to 1 week's imprisonment; and for an offence of larceny from a shop she was sentenced to 1 week's imprisonment; all of these sentences to be concurrent making 3 weeks' imprisonment in all. She now appeals and has been on bail pending appeal. 2. We have to refer first to the transcript as the facts which were set out by the Centenier to the Magistrate are not contained in the transcript. To read from what the transcript says: "JUDGE LE MARQUAND: Okay, thank you. So I'll hear the facts then. CENTENIER ANDREWS: Reads the facts. JUDGE LE MARQUAND: Okay, thank you, any questions?" In other words the transcriber has not, in fact, transcribed what Centenier Andrews said. We have to say that this is highly unsatisfactory. It is important that a Court of Appeal should be aware of the way in which the prosecution put the case to the court below and we ask that in future everything said by the Centenier in outlining the facts is transcribed. 3. The facts briefly, as we understand them to be, are as follows. The appellant and a Neil Golder went to 'Fineprice' Supermarket at St. Clement. They were seen at the wine and spirit area and the appellant was seen to put a bottle of white wine down her jogging trousers and leave the store. The duty manager followed her and spoke to her when she was sitting in the driving seat of a white 'Fiat' van. She was asked what she had taken. She initially denied having taken anything but soon admitted it and gave the bottle of wine back. Mr. Golder then came out; he apparently did not have enough money for the bottle of wine which he was going to purchase. He asked to borrow 10p, but returned to the shop and collected his money, having insufficient for the purchase of the wine. He then came out and got into the car and the appellant drove off. She was later arrested. She admitted the larceny of the bottle of wine; and she admitted driving whilst disqualified because on 21st March, 2000, she had been disqualified for 15 months for driving with an excess level of alcohol. Although initially she denied any intention of driving and said that she had not driven to the shop and had only driven a very short distance on the way back before Mr. Golder had taken over, she subsequently admitted that she had in fact driven to and from the shop. 4. In mitigation before the Magistrate, the appellant's counsel, Advocate Fogarty, made a number of points. She referred to the guilty plea; the relative youth of

the appellant - she is 26; the fact that she did not have a bad record; that there was no previous dishonesty; she was deeply ashamed of what she had done; and she had voluntarily attended at police headquarters where she had made admissions. In particular Miss Fogarty referred to the element of fear which surrounded the matter, in that in her question and answer interview the appellant made it clear that she felt threatened by Mr. Golder and had felt pressurised by him into committing the larceny and the driving whilst disqualified. 5. Miss Fogarty urged that the Magistrate pass a sentence of community service. The Magistrate rejected this and said the following when passing sentence: "This court, in relation to driving whilst disqualified, is a very strict one, the normal sentence is a custodial sentence. I've considered carefully the mitigation and the background report but you are aged 26, you're not a person of weak feeble character and the fact is you were driving whilst disqualified and whilst uninsured on this occasion, and I'm going therefore to sentence you to three weeks' imprisonment in accordance with the normal policy of the court." 6. Before this Court Miss Fogarty has accepted that the sentence cannot be said to be wrong in principle nor manifestly excessive. However, she says that community service should have been imposed as a direct alternative to a prison sentence. In particular - apart from repeating the mitigation available and relying upon it - she has urged three matters. 7. First she has cited a number of English cases dealing with the interpretation of the equivalent provision in England to Article 4(2)(c) of the Criminal Justice (Young Offenders) (Jersey) Law, 1994 . That is the provision which says that for young offenders youth detention should only be imposed where the Court is satisfied that the offending is so serious that a non-custodial penalty cannot be justified. We have to say that we have not found those cases to be of assistance to us in this case because we are not dealing with a young offender. 8. Secondly, she has argued that, if he were minded to reject community service which she was urging, the Magistrate should have indicated to Miss Fogarty that that was in his mind. We are unable to accept that submission. When the matter was before the Court on 5th December, the Magistrate said this in the presence of Miss Fogarty: "I'm remanding this matter to 3rd January in the afternoon in this court to get background reports; all sentencing options remain open. You mustn't assume that because I'm going to get background reports that I will not be considering a prison sentence, okay? Your options are open and ... but obviously I'm taking a serious view of the matter as I always do when driving whilst disqualified." It must, therefore, have been clear to Miss Fogarty that a prison sentence was a strong possibility. 9. Furthermore, the general guidelines issued by the Magistrate make it clear that, for an offence of driving whilst disqualified, such an offence will "almost inevitably attract a custodial sentence." We therefore reject the proposition that the Magistrate should have informed Miss Fogarty that prison was a strong possibility or that he was minded to reject her submission as to community service. It is counsel's duty to assess the likely sentences and to make the points which he or she wishes to make. 10. Thirdly, Miss Fogarty argues that the Magistrate failed to give adequate reasons for rejecting community service. We have read what the Magistrate said when he passed sentence. In our judgment he made it clear that he had considered the various matters put forward, including that of the climate of intimidation and he had rejected these in the light of the normal policy of a prison sentence where a person had flouted a court order by driving whilst disqualified. We think it is clear that he balanced the various considerations and we see no defect in his reasons. 11. Notwithstanding our rejection of Miss Fogarty's three main submissions we

have considered this matter very carefully in the light of all the mitigation but we have to remind ourselves that the test is not what sentence we might have passed ourselves had we been sitting. The test is whether the sentence passed by the Magistrate was one which was outside the bracket of sentencing which was reasonably open to him. Given the guidelines - which we accept are most certainly not tramlines - and given the facts of this case we cannot find that the sentence passed by the Magistrate was outside the bracket open to him and accordingly we have no alternative but to dismiss the appeal. Miss Fogarty shall have her legal aid costs. Authorities AG-v-da Rosa (23 rd May, 1988) Jersey Unreported. Mière -v-AG (5th February, 1990) Jersey Unreported. Page Last Updated: 19 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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