

JERSEY / JUDGMENT

Skopans -v- AG [2011] JRC 210 (27 October 2011)

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JUDGMENT

THE BAILIFF: 1. This is an application for an extension of time within which to appeal and, subject to that being granted, an appeal against a total sentence of 10 months' imprisonment imposed by the Assistant Magistrate on 22 nd August, 2011. 2. The facts can be shortly stated. On 24 th July, 2011, PC Bree was on mobile patrol. At about 11:30pm she saw a Fiat Panda on the Route de Longueville. Due to the poor manner of driving she stopped the car near the Rue des Pres Trading Estate; she spoke with the appellant who was the driver. He confirmed that he had been drinking and he failed the roadside breath test. The force control room confirmed that the appellant was disqualified from driving. The officer noted that the car was dangerously overloaded in that it contained seven people, including the owner who was located locked in the boot. At police headquarters the usual breath test showed a level of 50 micrograms of alcohol per 100 millilitres of breath. 3. The appellant was charged with four offences - driving a motor vehicle with excess alcohol; driving a motor vehicle whilst disqualified; using a motor vehicle without insurance and driving a motor vehicle which was overloaded. He appeared before the Magistrate's Court on 25 th July and pleaded guilty to each of these offences. He was remanded for a background report. He re-appeared on 22 nd August when he was sentenced. He had a number of previous convictions and this was in fact his third conviction for driving with excess alcohol. The first offence was in Guernsey in March 2008 when he was fined and disqualified from driving in Guernsey for 30 months. In June 2010 he committed a second offence of driving with excess alcohol. He was fined by the Magistrate's Court in Jersey and disqualified for 15 months; he was also convicted at that time of driving without a licence. It is noteworthy that this offence was committed before the expiry of the disqualification in Guernsey, although of course he committed no offence by driving in Jersey as the disqualification of the Guernsey court only applied in Guernsey. Then he committed these offences, as we have said, in July 2011. He has some other motoring offences in his record but these we do not consider to be particularly relevant, although they do paint an overall picture of ignoring the law on driving. 4. The Assistant Magistrate, as we have said, imposed a total sentence of 10 months and this was made up as follows: for the drink driving offence, 6 months' imprisonment; for driving whilst disqualified, 10 months' imprisonment; for driving without insurance, 6 months' imprisonment. All of these were concurrent, making the total of 10 months' imprisonment. The appellant was also disqualified

from driving for 5 years. The Assistant Magistrate imposed no extra penalty for the overloading offence but said that she was treating it as an aggravating factor in relation to the other offences. No appeal is brought against the disqualification period. 5. We consider first the application for leave to appeal out of time. The appeal was lodged on 16 th September when it should have been lodged by 30 th August. It appears that the duty advocate who represented the appellant very adequately before the Assistant Magistrate gave him negative advice concerning an appeal, and on arrival at the prison he was apparently erroneously informed that he had 28 days in which to appeal. That is of course the period for appealing from the Royal Court but there is only a period of a 8 days for appeals from the Magistrate's Court to the Royal Court. He applied promptly for legal aid for a second opinion and when this was received in due course from Applebys, he filed the current appeal forthwith. 6. The Attorney General does not oppose the application for an extension of time and in the circumstances that we have just described, we grant the extension requested. 7. We turn to the appeal itself. Advocate Pearmain accepts, as she has to, that a prison sentence cannot be said to be wrong in principle for these offences, given in particular that this was the third drink driving offence by the appellant. But she contends that 10 months was manifestly excessive. We would summarise her arguments as follows:- (i) As to the drink driving offence, the maximum sentence of imprisonment under the statute is 6 months. The appellant therefore received the maximum despite pleading guilty and despite the fact that the level of alcohol was at the bottom of band B, that is 50-69 micrograms, as opposed to band E which is 105 micrograms plus. She said that the correct sentence in all the circumstances was 2-3 months' imprisonment. (ii) As to the driving whilst disqualified, the maximum sentence is 12 months' imprisonment. She says that, if one assumes at least 2 months deduction for a guilty plea, the sentence of 10 months is therefore the maximum on a guilty plea; in other words this would be the appropriate sentence for the most serious such offence, for example a repeat offender. Yet in fact this was the appellant's first such offence. The Magistrate's Court Guidelines suggest 2-3 months' imprisonment for such an offence and she submitted that was the appropriate sentence. (iii) As to the no insurance offence, the maximum penalty under the statute is 18 months' imprisonment. The Magistrate's Court Guidelines suggest a fine for a first offence, as this was. However there were aggregating factors in terms of the other offences and Advocate Pearmain accepted that a prison sentence of between 2 and 6 months would be appropriate. She referred to the background report and the excellent references; the appellant has held a responsible job which confers trust in him; his employer had given a reference and indeed took the trouble to attend the appeal; and accommodation and a job remained open for him. She said that the Assistant Magistrate was correct to make the sentences all concurrent and that in all the circumstances the total sentence should have been something between 2 and 6 months. 8. Crown Advocate Hopwood agreed that some of the individual sentences were not justifiable but argued that it was proper to impose shorter consecutive sentences to arrive at the same total as the Assistant Magistrate, on the basis that 10 months was not manifestly excessive for the total offending. 9. Where several offences arising out of the same circumstances occur, the Court has a choice as to whether to proceed by way of concurrent or consecutive sentences. In many cases it will impose concurrent sentences. However, when it does this, it is perfectly proper to take into account, as an aggravating factor, the existence of the other offences and therefore increase the

sentence on, usually, the most serious offence beyond that which it would have been if that offence had stood alone; otherwise an offender receives no greater punishment for committing several offences than he would for committing only the most serious offence. Alternatively, the Court may impose consecutive sentences for each offence. In those circumstances the Court should not treat the other offences as an aggravating factor increasing the individual sentences, as otherwise the offender will be punished twice for the same conduct. In the case of consecutive sentences, the Court must look at its provisional decision and then apply the totality principle in order to see whether the total reflects the overall offending; and it may well end up reducing one or more of the individual sentences so as to achieve the right total result. 10. With that introduction we turn to these offences. Taking first the drink driving offence, we do not think it can stand. 6 months is the statutory maximum but that would be on a not guilty plea. Credit must always be given for a guilty plea even if it may be comparably little in some cases and in many cases there would be little defence to a drink driving offence. The maximum sentence cannot properly be imposed where the offender has pleaded guilty. Nevertheless, this was the third drink driving offence within a comparatively short period, albeit that the level was not particularly high, nor was it linked with something such as dangerous driving. In all the circumstances we think 4 months' imprisonment was the appropriate sentence on that charge. 11. As to the driving whilst disqualified, the maximum under the statute is 12 months' imprisonment. Assuming some discount for a guilty plea (and again this may often not be very much as there is unlikely to be a defence), 10 months would appear to be about the maximum that can be imposed on a guilty plea. It would therefore be appropriate for the most serious such offence, for example a repeat offender. However this is the first such offence committed by the appellant and we do not think it can be appropriate to impose what is in effect the maximum on a guilty plea. We note that the Magistrate's Court Guidelines suggest a sentence of 2-3 months' imprisonment for a first such offence and given the particular circumstance in this case, we think 3 months' imprisonment would be appropriate. 12. As to the driving without insurance, that was also a first offence for the appellant. The Magistrate's Court Guidelines suggest a fine for a first such offence. We think that there were aggravating features in this case such as the overloading and all in all, we think that a sentence of 3 months' imprisonment would be appropriate. The Court has in other cases emphasised the seriousness of driving without insurance and, whilst it is not for us to determine the matter today, there is an issue as to whether the guidelines for a first offence remain appropriate. We rather doubt it and consider that driving without insurance merits greater punishment even on a first offence. 13. We think that the sentences for the driving whilst disqualified and the driving without insurance should be concurrent; one follows almost automatically from the other and they are closely linked. However, we think that the sentence on the offence of driving with excess alcohol should be consecutive. It is separate from the other two offences and we have not taken it into account in fixing the sentences for those other two offences. If the sentence for the drink driving offence were made concurrent there would, in reality, be no extra punishment to reflect the fact that the appellant has committed three offences rather than just the drink driving offence. He would receive a sentence of 4 months' imprisonment, which would be what he would have received even if he had not committed the other two offences. We therefore conclude that the sentence on that offence must be consecutive.

14. The result is that the appeal is allowed and we substitute sentences as follows. On the drink driving offence, 4 months' imprisonment; driving whilst disqualified, 3 months' imprisonment; driving without insurance, 3 months' imprisonment. The latter two are concurrent but they are consecutive to the drink driving offence and that makes a total of 7 months' imprisonment. 15. As a postscript, we would also suggest that consideration be given to increasing the maximum sentence for driving with excess alcohol, in that a person who repeatedly re-offends, thereby endangering the public, should be liable to more than 4-5 months on a guilty plea. 16. The defence is awarded costs pursuant to Article 20(5)(a)(i). Authorities Magistrate' Court Guidelines. Page Last Updated: 19 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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