

JERSEY / JUDGMENT

# Szulc -v- AG [2013] JRC 249 (09 December 2013)

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## JUDGMENT

THE DEPUTY BAILIFF: 1. The defendant seeks to appeal out of time against a recommendation for deportation which was made by the Relief Magistrate in circumstances I will come on to shortly. Time for bringing that appeal was extended by the Court, the Crown entering no objection. The reasons for the extension were that it was clear that the fact that it was brought out of time was down to an administrative mishap in the office of the lawyers acting for the appellant.

2. On 29 th August this year at about 6:30 in the morning, police officers were in the area of Springfield monitoring traffic when they noticed the defendant driving a silver BMW registered J99805. They recognised the appellant. He was in the vehicle on his own. He reversed onto a private car park onto Val Plaisant and he drove onto Trinity Road where the officers stopped him. He was arrested for driving whilst disqualified. Subsequently he was prosecuted for that offence and for driving without insurance and he was convicted. His record shows that he was convicted on 13 th April, 2010, for driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit, when he pleaded guilty, fined £600 and disqualified from driving for 21 months. He was also convicted on the same occasion for driving without a licence and driving without insurance.

3. On 14 th November, 2011, the appellant was before the Magistrate's Court again and convicted of driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit and this, we note, took place within some 18 months of the earlier conviction. He was imprisoned for 2 months and disqualified from driving for 3 years. On the same occasion he was also convicted of driving or attempting to drive while disqualified, driving without insurance and escaping from lawful custody, for which he received other sentences of imprisonment.

4. It was in those circumstances that the Relief Magistrate came to consider the question of deportation. The Relief Magistrate approached the matter in the correct manner in the sense that he recognised he had to ask himself two questions. The first question was whether the appellant's continued presence in the Island is detrimental to the island. The Relief Magistrate considered that these were serious offences in the record and also before the Court at the time. Driving without insurance, he noted, was a serious offence and he decided that the continued presence of the appellant in the Island was detrimental. The Court has considered that part of the test and we think the Relief Magistrate was entitled to reach the view that he did. There is no doubt that, in our view, that a person who comes to live in this Island and commits

offences of this kind within this type of delay, within this period of time, is a person who can be treated as a person falling within the first part of that test in *Camacho-v-AG*

[2007] JLR 462 , namely that his continued presence in the Island is detrimental. Nonetheless we need to keep in mind the nature of the offence which gave rise to this question, and we have done that when we come to look at the second part of the question. The Relief Magistrate rightly asked himself the second question which was whether or not there were any European Convention rights which ought to be taken into account in determining whether a recommendation for deportation ought to be made. What he said was this:- "The next matter I have to consider is the effect of a possible deportation order on you and your family. I have noted that your girlfriend lives in Jersey and that she is pregnant and that you plan to get married and that you also have family here. None of those persons is Jersey." 5. Now the appellant's fiancée, we are told and there is no dispute about it, has been resident in Jersey for more than 9 years. She receives her housing qualifications in early 2014. To disregard such a period of residence was, in our view, wrong in principle. It is to deny the Island community's welcome which is extended to those coming here from other countries. Therefore, having decided that this was a misdirection, we have gone onto consider afresh how we would balance out the relevant factors that need to be considered for the purposes of a possible recommendation for deportation. As I have indicated we take the view that the first part of the *Camacho* test is met. As to the second part of the test I have referred to the welcome which is extended to those coming to our shores from other countries which is in this case relevant both to the appellant and his fiancée. That welcome is a reality but it is guarded. We remind those coming here, as non-British Nationals, that it is a privilege to live in this Island so when a court is asked to consider a recommendation for deportation, it has to balance the competing demands of our welcome and our requirement that those coming to live here must respect our laws, must respect court orders and must make a positive contribution to our Island life. 6. The fact that we have been out considering this matter for some time shows that we have found this to be a very difficult balancing exercise to conduct. Having done so we have resolved that we come down in favour of giving the appellant a chance in relation to deportation on this occasion and we think that in the circumstances that the Relief Magistrate did misdirect himself as to what it was to be a Jersey person, it is right to take the Convention rights of the fiancée of the appellant and her unborn child into account for the purposes of our consideration now. 7. And so in the circumstances we are going to set aside the recommendation for deportation and the appeal therefore succeeds. What I would say to you however, is that you have come very, very close to that deportation order being upheld. If you, and I am sure you will not, if you step out of line and commit any further criminal offences you are bound to find yourself facing, again, a suggestion for deportation and, on the circumstances that we have available to us at the moment, it is inconceivable that this Court would reach the same conclusion next time round. So you need to take that firmly into account and understand that you have been very lucky on this occasion. 8. Costs are awarded to the defence. *Authorities Camacho-v-AG*

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