JERSEY / JUDGMENT

Turner v AG [2023] JRC 207 (07 November 2023)

[2023] JRC 207

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE COMMISSIONER: The appeal 1. On 21 August 2023, the Appellant was sentenced by the Magistrate, following guilty pleas, in respect of one charge of careless driving and one charge of speeding. In respect of the careless driving conviction, he was fined £5,000 and disqualified from driving for a period of twelve months. In respect of the speeding conviction, he was fined £200 and his licence was endorsed in respect of both offences. He now appeals against his sentence in respect of the careless driving conviction. Although the sentence in respect of the speeding offence was not specifically appealed reference to it was included in the Appellant's submissions. The test on appeal 2. The test to be applied by the Court is well established and has been articulated in a number of cases, including Loureiro v AG

[2015] JRC 154 , in which, at paragraph 9, the Court said: "It is well established that the Court will not interfere with the sentence imposed by the Magistrate unless it was one which is not justified by law, or the sentence was passed on the wrong factual basis, or some matter has been improperly taken into account or left out of account, or there was some fresh matter which ought to have been taken into account or whether the sentence was wrong in principle and manifestly excessive. In particular, it is not the function of the Royal Court to tinker with sentences which are within the range open to the sentencing court simply because it might itself have fixed a lower term of imprisonment." 3. In AG v Price

[2019] JRC 211 , it was held, at paragraph 19, that: "The court may only allow an appeal where the sentence is wrong in principle or manifestly excessive. It will not interfere merely because, if they had been sitting at first instance, the members of this court would have passed a different sentence." The grounds of appeal 4. The grounds of appeal were as follows: (i) Having regard to the Magistrate's Court Sentencing Guidelines and having heard the mitigation advanced on behalf of the Appellant, the totality of the fine and disqualification imposed by the Magistrate are so far beyond the range of the sentencing guidelines that it can only be regarded as manifestly excessive and wrong in principle. (ii) The Magistrate, when considering sentence, failed properly to take the following matters into account: (a) The appropriate range of sentencing as set out in the Magistrate's Court Sentencing Guidelines. (b) The personal mitigation available to the Appellant, the impact

of the disqualification upon the Appellant's employment and ability to pay a fine. The facts in relation to the careless driving charge 5. The careless driving charge arose from a collision that took place on 6 December 2022 on La Route des Laveurs, St Ouen, between a van being driven by the Appellant and a Ford Focus motor car. The Appellant accepted that his driving had caused the collision, but on the basis that he had " drifted partially over the white line onto the wrong side of the road ". 6. It was the prosecution's case that the Appellant had driven in a careless manner along Route du Marais, overtaking a car driven by a Mr Rothwell at speed and whilst holding a mobile phone. He then continued along Mont Pinel at speed, continuing along La Route des Laveurs where he rounded a corner on the wrong side of the road and, as a result, collided with the Ford Focus. 7. The Appellant's version of events was that, having delivered a parcel to a property at L'Etacq he pulled out of the car park at Les Pres d'Auvergne and turned right onto La Route des Laveurs. He stated that as he was driving along La Route des Laveurs, he glanced at the package to check the address, which caused him to drift partially over the white line as he rounded the corner and he then collided with the Ford Focus. There was therefore a significant difference between the prosecution's case and the Appellant's version, both as to the route that the Appellant took and the manner of his driving. Accordingly, a Newton hearing took place before the Magistrate. Evidence was heard from the witness, Mr Rothwell, and the Appellant. The driver of the Ford Focus did not make a formal statement and was not called to give evidence. 8. At the conclusion of the Newton hearing, the Magistrate stated that she was satisfied beyond reasonable doubt with the account of events given by Mr Rothwell and that the Appellant would be sentenced on that basis. The Appellant was remanded for a pre-sentence report. The sentencing hearing 9. In her sentencing remarks, the Magistrate noted that the Appellant had put forward a basis of plea which in her view was wholly untruthful and that he had " lied to the Court ". The Magistrate referred to the Appellant's denial that he had been holding a mobile phone when overtaking Mr Rothwell, having stated that he did not have his phone and that it must have been a device stuck on his windscreen for checking addresses. The Magistrate noted that such a device could not be seen in any of the photographs of the Appellant's vehicle. She further noted that the Appellant had said that he was only " slightly over the white lines ", yet the photographs taken at the scene showed that the track marks of his vehicle came from considerably within the oncoming lane. She stated that " This was shocking driving and, in my view, this falls to be sentenced at the top of the Magistrate's Court Sentencing Guidelines as driving bordering on the dangerous ". 10. The Magistrate acknowledged that the Appellant had some credit for a guilty plea but, given the result of the Newton hearing, such credit was considerably reduced. She referred to the Magistrate's Court Guidelines but noted that they were based on defendants who entered an unequivocal plea of guilty and who were first offenders, pointing out that the Appellant was neither. 11. The Appellant has a significant record of previous convictions, although we accept that a large number of them were non-motoring offences committed when he was younger and therefore were of little relevance. However, he had a significant number of motoring offences including three for speeding, two for careless driving, one for

dangerous driving (although this related to the state of the vehicle rather than the manner of his driving), together with other motoring offences such as driving without insurance, holding a mobile phone whilst driving and failing to obey traffic signals. It was notable that, despite having had the collision in December 2022, which was the subject of the careless driving charge, he had within two months also been apprehended for driving at 49 m.p.h. in a 30 m.p.h. zone. 12. The mitigation put forward on the Appellant's behalf included his guilty plea and the fact that no injuries resulted from the collision. However, the pre-sentencing report noted that the Appellant did not accept full responsibility for the careless driving offence and continued to dispute the level of his carelessness, that he was speeding and that he was using a mobile phone whilst driving. 13. The pre-sentencing report described a challenging childhood which had led to persistent offending and problematic substance and alcohol misuse, although it highlighted that the more serious offending had decreased over the years and that the Appellant no longer appeared to have issues with alcohol or substances. Nevertheless, he continued to struggle with his emotional resilience and regulation and had sought professional support for his mental health. Defence counsel drew the Magistrate's attention to the fact that a disqualification was likely to lead to the loss of the Appellant's job as a delivery driver and that, as his employment was one of the few positive aspects in the Appellant's life, the loss of his job would not only have a profound effect on his life but would also significantly impact his ability to pay a fine. 14. When imposing the disqualification, the Magistrate stated " This is a driving offence and it's one of many driving offences. You have quite a shocking record. Not only generally, but specifically for driving. You are a professional driver. In my view, you are a danger on the roads, and I'm going to disqualify you before somebody gets seriously injured ". The Magistrate's Court Sentencing Guidelines 15. Advocate Herold-Howes placed considerable reliance upon the difference between the sentence imposed by the Magistrate and the figures set out in the Magistrate's Court Sentencing Guidelines. He noted that Band C, relating to careless driving which did not cause serious injury, refers to cases involving an " overtaking manoeuvre at speed resulting in collision of vehicles, or driving bordering on the dangerous ". In such cases, the Guidelines suggested a starting point for a fine of £2,200 with a range of £1,900 to £2500, and in relation to disqualification a period of one to six months. We note that the Guidelines refer to factors which might indicate higher culpability and those relevant to the instant case were " excessive speed " and " carrying out other tasks while driving ". 16. Whilst the Appellant's counsel acknowledged that the Guidelines do not have statutory force, he noted that the importance of consistency of sentences was noted in the Royal Court's decision in Y v AG

[2021] JRC 143 where the Court stated, at paragraph 42: "We accept that the Magistrate's Court Guidelines are just that and are not binding on the Court. At the same time, it is desirable for there to be some consistency in the sentences imposed by the courts for similar offences for which the Magistrate's Court Guidelines are an extremely valuable tool." 17. We note that in Y v AG , which was a Superior Number sentencing appeal against a sentence imposed by the Inferior Number, the appellant had pleaded guilty and the

driving offence was a first time offence by a seventeen year old. Accordingly, the appellant in that case was the type of offender that the Guidelines were stated to cover. The Superior Number noted that the disqualification of twelve months was double the highest range of starting points indicated by the Guidelines and therefore, taking into account aggravating and mitigating factors, " way in excess of what would probably have been imposed if the appellant had been sentenced before the Magistrates Court ". 18. As we have already noted, the Guidelines make clear that the starting points identified by them are based on a first-time offender pleading guilty. Where a specific case falls outside that categorisation, other factors, which may be numerous, come into play and will influence the actual sentence passed. In our view, there is a danger in such cases of approaching the matter as a precise arithmetical exercise and, on appeal, endeavouring to " back-calculate " to arrive at the figures suggested in the Guidelines. The Guidelines are of assistance, but it should be recognised that they are guidelines, not tramlines. Our decision 19. The maximum fine in respect of a careless driving offence is £10,000. Unlike the offence of dangerous driving, there is no option of imprisonment. The Guidelines suggest that the upper end of the range of fines for Band C, based on a first offender pleading guilty, would be £2,500. Whilst the Magistrate recognised that the Appellant would be entitled to some credit for his guilty plea, it is clear that this would be considerably reduced given that the basis of plea offered by the defence was significantly different from the prosecution's case, and the Newton hearing required a witness to be called and cross-examined. Furthermore, the Magistrate clearly took the view that the disparity between the Appellant's account and the account of the independent witness, which she accepted, was such that, in the light of her finding, the Appellant had lied to the court. 20. Notwithstanding that the offence was such that a custodial sentence was not an option, the Magistrate had the benefit of a detailed pre-sentencing report, and she made clear that, whilst she had considered a probation order, she regarded a fine as the appropriate sanction. She did however point out that the Appellant could engage with the Probation Service on a voluntary basis, and we were informed at the hearing that he has in fact done so, which is to his credit. The Magistrate was well aware that the punishment imposed was likely to lead to the loss of the Appellant's job. However, whilst at one stage she referred to him as a " professional driver " it would appear that this was a reference to having had jobs which involved driving, rather than driving being an occupation for which the Appellant was trained and qualified. Indeed, we were somewhat surprised that the Appellant had managed to secure positions that involved driving given the record of motoring offences that he has. The Magistrate had full details before her of the Appellant's financial position, and of the likely position should he lose his job, which is evidenced by the fact that she indicated a low weekly repayment figure of £20 for the first eight weeks and a subsequent review by the Viscount thereafter. 21. We recognise that the fine was a substantial one but, in our view, it cannot be said to be manifestly excessive. In the circumstances of this case, it was appropriate to comprise both a punitive and a deterrent effect. This was not a case of a momentary loss of concentration at a low speed but included speeding over some distance, use of a mobile phone and the checking of an address on a package whilst driving. Whilst it is fortunate

that no injuries were sustained in the collision, the Appellant's loss of control on a blind bend could well have led to far more serious consequences. 22. In relation to the disqualification, the Appellant needs to learn that the privilege of being granted a driving licence brings with it duties to respect the legislation governing the use of motor vehicles, which is aimed at protecting other road users. The Appellant's history of motoring offences demonstrates a complete disregard for that legislation, this being his fifth conviction for careless driving in eleven years and, in our view, the Magistrate was entirely correct in deciding that a period of disqualification should be imposed. Again, whilst the period of disqualification was substantial, we do not regard it as manifestly excessive or wrong in principle, taking into account not only the features of the driving but also the Appellant's continued failure to accept full responsibility for what occurred. Whilst the disqualification was likely to lead to the loss of the Appellant's job that was a consequence of his own actions. 23. For the above reasons the appeals against sentence in respect of both the fine and disqualification are dismissed. Authorities Loureiro v AG

[2015] JRC 154 . AG v Price

[2019] JRC 211 . Y v AG

[2021] JRC 143 Page Last Updated: 10 Nov 2023 Back to top About JLIB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- This website is not compatible with your web browser. You should install a newer browser . If you live in Jersey and need help upgrading call the States of Jersey web team on 440099. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://www.bailii.org/je/cases/UR/2023/

CASE PAGE https://chat.esheria.ai/case-law/jersey/turner-v-ag-2023-jrc-207-07-november-2023

Prepared on 26 October 2026 · Esheria