

JERSEY / JUDGMENT

Wilson v AG [2004] JRC 216 (09 December 2004)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal against a sentence imposed by the Relief Magistrate on 16 th November, 2004. The appellant pleaded guilty to a charge of speeding. He was fined £220, disqualified from driving for 2 months and ordered to take a driving test at the end of that period. 2. The facts are very straightforward. At about 9.30 p.m. the appellant was driving along Victoria Avenue when he was stopped. He had been travelling at 62 miles per hour. However, there were no aggravating factors. The weather was dry and fine and the traffic was light. 3. The appellant is aged 20. He has no previous conviction for speeding but he has been dealt with at the Parish Hall for speeding in July 2001, on which occasion he was fined £36. He was unrepresented before the Magistrate's Court. He explained what had happened and apologised. The Relief Magistrate asked him what he did for a living, he replied that he was a student working over in Jersey on an industrial placement and said that he was earning but was not asked how much. 4. The Relief Magistrate then imposed a sentence by fining and disqualifying him as we have described and ordering that he take a test. 5. Miss Juste has put forward a number of grounds of appeal. First, she refers to the fact that the Magistrate said: "Well, we are not going to have students rushing around at 62 mph." She submits that this might give an impression of bias against students although, of course, she is not alleging any actual bias. We do not agree. We think this was a perfectly harmless remark and nothing turns on it. 6. Secondly, she says the Magistrate may have placed undue weight on the fact that the appellant had previously been dealt with at a parish hall for speeding. In the end we do not think she proceeded with this point and we would not agree with it in any event. The Relief Magistrate was clearly aware that the previous occasion was a Parish Hall sanction. The Court in *Williams -v- AG* (16 th October, 1989) Jersey Unreported; [1989/173] made it clear that it is proper and indeed appropriate for the Magistrate's Court to be made aware of previous sanctions at Parish Hall enquiries and this is clearly something the Relief Magistrate was entitled to take into account. 7. Thirdly, we come to the real ground of appeal, and that is, as Miss Juste submits, that the Relief Magistrate passed a sentence which appears to fall outside the guidelines for the Magistrate's Court, without extracting the full mitigating circumstances and without giving any reason for departing from the guidelines. 8. The relevant passage of the Magistrate's Court guidelines starts with the following note: "Where the judge is minded to endorse or disqualify a driving licence, he must warn the defendant and invite him to

address him on both sanctions". 9. Miss Juste submits that the Relief Magistrate did not do that on this occasion; he simply announced the sentence as including disqualification. 10. As to the guidelines themselves the relevant part in connection with speeding says this: "Consider endorsement up to 20 mph above limit and normally endorse 21 mph above limit and upwards. Disqualify if more than 30 mph above speed limit after due enquiry of the defendant with requirement to take driving test under provisions of Article 7 (1)(B); consider disqualifying for third offence if recent say 3 offences in 5 years plus test". 11. This Court has now received additional information from which it would seem that the appellant has to travel as part of his placement and that the lack of a licence is certainly causing him some difficulty. 12. Furthermore, it is, of course, the case that where a test is ordered this will add to the length of the period of disqualification until it is possible to pass the various theory tests and to take the practical test. 13. In short, says Miss Juste, the Relief Magistrate did not comply with the introduction to the note which is expressed in mandatory terms, and then passed a sentence which appears to fall outside the guidelines. 14. We emphasise that guidelines are not tramlines. Furthermore, it is important that people should realise that if they do exceed the speed limit by a substantial margin they are likely to be disqualified. This is an important consideration in attempting to keep down the level of speed in the Island, and the consequent risk of accident and injury. 15. Nevertheless, not without some hesitation, we have concluded that this appellant may be left with a sense of grievance. The Relief Magistrate did not warn him about disqualification as suggested by the guidelines. If he had, this would probably have extracted the information that we have been given about his need for a licence. Furthermore, the Magistrate did not give any reason for departing from the guidelines. In some cases that is not necessary

- it is obvious - but on the face of it in this case he might have thought it right to give some reasons. 16. The fact remains that the appellant was travelling at 62 mph in a 40 mph limit area and it was the second occasion on which he had exceeded the speed limit within a comparatively short space of time. We have therefore concluded that it was not manifestly excessive to impose a period of disqualification of 2 months. However, we think that, in view of the possible sense of grievance, the fair outcome would be to remove the requirement that the appellant should take a test and this will shorten the effective period of disqualification because it will mean that it will end in mid-January. We therefore allow the appeal to that extent by removing the requirement to take a test. 17. We wish to conclude by repeating what we have just said: guidelines are not tramlines; and, of course, Magistrates are free to depart from them when appropriate. Nevertheless, they are important and they are designed to achieve consistency; they will therefore no doubt influence Magistrates quite considerably when passing sentence. 18. We would like, in any event, to raise the question whether the effective cushion of 30 mph above the speed limit is not too high even for a first offender. We accept, of course, that circumstances will vary enormously. Matters will turn on the nature of the road, the number of exits, the level of traffic, the weather conditions, to name but a few, and driving at say 25 mph over the limit on Victoria Avenue, may not be as serious as travelling at a similar speed above the 40 mph limit in one of our narrow twisty main roads with many exits and entrances. 19. We think that the general cushion of 30 miles

an hour may now be a little high and we would like to suggest to the relevant authorities and to the Magistrates that they at any rate re-visit this to see whether it remains correct or whether the cushion should be a little lower. Those are our comments and we therefore allow the appeal to the extent we have said. Authorities *Pipon -v- A. G.* (16 th August, 1999) Jersey Unreported; [1999/143]. *Re Ball* [1951] Cr. App. R . 164. Road Traffic (Miscellaneous Provisions) (Jersey) Law 1962. Road Traffic (No. 53) (Jersey) Regulations 2002. *Williams -v- AG* (16 th October, 1989) Jersey Unreported; [1989/173]. *Merceer -v- A. G.* [1989]JLR N.10A. Page Last Updated: 24 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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