



THE COURT OF APPEAL

[177/17]

The President

McCarthy J.

Kennedy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

ANTHONY DOODY

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 2nd April 2019 by Birmingham P.

1. Unusually, the matter before the Court involves an appeal against the duration of an order disqualifying the appellant from holding a Driver's Licence. It is important to say that at all stages, it has been made clear, absolutely clear that the scope of the appeal is confined to raising the issue about the duration of the disqualification order. The disqualification order in issue was imposed in the course of a sentence hearing on 15th March 2011 in the Dublin Circuit Criminal Court. On that occasion, the appellant appeared before the Court, having pleaded guilty to an offence contrary to s. 112 of the Road Traffic Act relating to the unauthorised taking and use of a motorcycle. He received a sentence of two years imprisonment, but that sentence was suspended on terms and, in addition, he was disqualified from holding a Driver's Licence for a period of 30 years. It is that disqualification that is now in issue.

2. The matter before the Circuit Court related to an offence that had occurred on 4th May 2009, when the appellant was detected driving a motorcycle, which had been taken earlier, in a dangerous manner. By any standards, the offence was a serious one, it could very well have given rise to additional charges, and it was the case that the appellant appeared before the Court with a number of previous convictions recorded. It was, in the circumstances, a case that might very well have resulted in a custodial sentence to be served. However, at a relatively early stage, the presiding Judge, Judge Tony Hunt as he then was, intervened to say that he would not be imposing a custodial sentence, commenting that the accused was in the "last chance saloon", but adding that there would have to be a significant disqualification for using a stolen vehicle, to which counsel on behalf of the accused immediately responded by saying that that was inevitable and that that was accepted. It should be said without further ado that the Judge's view that Mr. Doody was someone worth taking a chance on has been vindicated because Mr. Doody has taken the chance offered by the Court. He has acquired family and domestic responsibilities, he has a solid work record and he has not been before the courts since.

3. In relation to the disqualification aspect, some confusion entered into the proceedings in the Circuit Court. When, in the usual way, the Garda who was giving evidence on behalf of the prosecution was giving details of prior convictions, he referred to a number of disqualifications, and in particular, referred to an order disqualifying for a period 15 years from holding a Driver's Licence. That caused the Judge to comment "well, 15 years is a very long time. I'll simply impose a disqualification of like length from today's date", adding "perhaps, in 10 or 15 years time, he might have got sufficient maturity to realise that using the road is a privilege and not a right and maybe he'll have had time to reflect". What happened then was that, when he was in the course of his sentencing remarks, the Judge was interrupted by prosecution counsel to say that it had just been brought to her attention by Gardaí that Mr. Doody had in fact been disqualified on 31st March 2009 for a period of 30 years. In those circumstances, the Judge made a similar order, also providing for a disqualification period of 30 years, and in doing so, observed "it's certainly longer than the kind of ban that this thing would attract, but I'll impose that".

4. Mr. Doody has been off the road since the hearing in the Circuit Court. In a situation where his inability to drive was giving rise to difficulties in sustaining employment, he has acquired employment in the construction sector, an application was brought before this Court seeking an extension of time within which to appeal. At that stage, the position was complicated by the fact that there were still extant orders of disqualification in existence, as it were, in parallel to the order of the Circuit Court. The Court's understanding is that all of those other disqualifications have been addressed and have either been removed or varied and the effect of that is that the only order that now disqualifies Mr. Doody from driving is the order of Judge Hunt which this Court permitted to be appealed out of time.

5. In a case where the Judge's overall approach has been vindicated, his belief that this was somebody who was worth supporting and worth offering a chance to has been proved to be correct, it is perhaps unfortunate to be talking in terms of looking to see if there is any error, but if there was an error, it is perhaps in the fact that the Judge in the Circuit Court felt that the appropriate course of action was to impose a disqualification of the same duration as had been imposed by other courts without addressing fully the question of what was the appropriate disqualification for the particular offender before the Court in respect of whom evidence of particular conduct had been given. It seems to the Court that that can be regarded as an error and that that being so, that this Court is in a position to address the question of disqualification afresh. In a situation where the hopes for Mr. Doody that had been expressed in the Circuit Court have been fulfilled and where Mr. Doody has not been in trouble, but on the contrary, has been working away steadily and has domestic responsibilities, it seems to the Court that society's interests are served by allowing him continuing with the progress that he has made.

6. In those circumstances, what the Court will do is we will quash the order of disqualification of 30 years and we will substitute a

disqualification of 8 years.