



THE COURT OF APPEAL

Record No: 143/2021

**The President
Edwards J.
Kennedy J.**

Between/

**THE PEOPLE (AT THE SUIT OF
THE DIRECTOR OF PUBLIC PROSECUTIONS)**

RESPONDENT

V

MARTIN KEARNEY

APPELLANT

**JUDGMENT of the Court (*ex tempore*) delivered on the 10th day of February 2022 by
Mr Justice Edwards.**

Introduction

1. This case involves a net point of statutory interpretation. The appellant in this case appeared before Judge Comerford in Sligo Circuit Criminal Court on the 8th of February 2021 in relation to an application for the removal of a disqualification order and the restoration of the appellant's driving licence, having completed one-half of the period of the disqualification order. During the hearing a discussion arose in relation to the appellant's previous 5 year driving disqualification in 2007, which was removed in 2009 following an application for same, and whether the appellant was now entitled to make an application for removal of the latter disqualification order under s.29(1) of the Road Traffic Act 1961, as amended by s.7 of the Road Traffic Act 2006.
2. The section provides;

"This section applies to a person in respect of whom a disqualification order has been made, whether before or after the commencement of section 7 of the *Road Traffic Act 2006*, disqualifying the person for holding a licence during a period of more than 2years, and which is the first such order made in respect of that person within a period of 10 years."
3. Counsel for the appellant sought removal of the disqualification where 10 years had elapsed from the date of the imposition of the previous disqualification order. On the first occasion that the matter was before him the trial judge expressed scepticism that he had jurisdiction to make the order sought and suggested that he was provisionally of the view that the previous disqualification order disentitled him from making the order sought. He

was prepared, however, to adjourn the matter for further legal argument, and that took place on the 24th of June 2021.

4. At the resumed hearing on the 24th of June 2021, counsel for the applicant, i.e. the appellant in the proceedings before us, made two main points. He contended in the first instance that the wording of the statutory provision was ambiguous. The alleged ambiguity centered around when the words "*within a period of 10 years*" were to date from. On behalf of the applicant contended that it was arguable that it was to date retrospectively from the date of the application for restoration, i.e., that there should have been no disqualification in the 10 years prior to the restoration application. The prosecution on the other hand were maintaining that it was to date prospectively from the date of the first disqualification, i.e. that there should have been no further disqualification for a period of more than 2 years within 10 years of the first disqualification.
5. The suggestion that the provision was ambiguous in this way was said to be supported by a comment by an academic commentator contained in a commercially produced annotated edition of the Road Traffic Acts. The annotated statute was produced and it is certainly the case that the commentary on s.29(1) of the Road Traffic Act 1961, as amended by s.7 of the Road Traffic Act 2006 in that work does suggest the interpretation contended for by the applicant/appellant.
6. The second substantial point advanced was that the Court of Appeal, in dealing with the appellant appealed against the severity of his sentence, had reduced the duration of the period of disqualification ostensibly on the understanding that the appellant would be able to seek a restoration of his licence after 50% of the period of disqualification had elapsed. The Circuit Court judge was furnished with a transcript of the proceedings before the Court of Appeal on the 4th December 2014, and we have also had regard to that. The transcript bears out that this Court, based on the submissions of the parties, may initially have been of that understanding, i.e., that the appellant could apply for a restoration of his licence after 50% of the period of disqualification had elapsed. However, the Court of Appeal was ultimately apprised of the terms of s.29(1) of the Road Traffic Act 1961, as amended, albeit only in passing and at a late stage of the hearing. It was suggested that the effect of the last clause of the provision was "*somewhat uncertain*". It is clear, however, that the Court was alive to the statutory change when it made its order varying the length of the disqualification from 20 years to twelve years, and as regards the asserted uncertainty the court remarked of its own motion that if either side wished to mention "*that aspect of the matter, they can do so but it ought to be done before the end of this term.*" In fact, neither side availed of this opportunity and the matter was not re-mentioned.
7. On behalf of the respondent it was argued in the present appeal that the statutory provision at issue is clear in its terms and that there was no ambiguity. It was suggested that the interpretation contended for by the applicant/appellant would require reading additional words into the provision in question after the words "*within a period of 10*

years", so that it would read "within a period of 10 years from the date of the application."

8. Ultimately, the trial judge, having heard the arguments on both sides rejected the interpretation contended for by the applicant/appellant, stating, inter alia:

"The sole question arises: so if there is a very strong case in justice to lift disqualification, do I have the power to do so? And the position I had when this was opened to me, last February, and the position I have now, is that the legislative provision really couldn't be any clearer: that you can make an application under section 29 in respect of a disqualification that meets two conditions and both of those conditions arise when the disqualification is imposed. Firstly, it has to be a disqualification for more than two years, and secondly, there can't have been a disqualification made in the preceding 10 years and the operative date is the date when the disqualification is imposed. That's the -- it's clearly the operative date for both conditions and I can't see how you can say the two years' requirement applies to the disqualification, but the first order being made in respect of 10 years doesn't apply to the disqualification. It seems to me absolutely clear and I -- I don't know -- I don't see any ambiguity in it myself. And when I read the section, that was the first interpretation I had of it, that's why I raised the issue in February; whether there was any jurisdiction before me. I just can't see any alternative.

Now, I accept then that whoever did the note on the -- for the annotation, and I don't know who does these notes for this annotation but whatever person the Act was farmed out to, did say that it was -- the imposed date of application was for the 10 years and ultimately it's Judges, and not people who write notes in textbooks, who interpret what the law is and I just disagree with whoever wrote this note in the textbook. I just -- that isn't a correct reading of what the legislation says and the only reading I'd say -- the legislation is one that there's -- is that the jurisdiction is plainly -- my jurisdiction is plainly limited to those cases for disqualification that meets the two conditions. And it might well be that someone came in with a disqualification for -- an 18 month disqualification and were able to advance incredibly strong interests, in the interests of justice, why they needed the licence desperately for the second 9 months or, sorry, well, the last six months -- the last six months of that 18 months disqualification and were able to line up reason, after reason, after reason, why it would be very harsh on them to be off -- to not be allowed to apply to lift the last six months of the 18 month disqualification and it might be that the initial Court made an error and thought that was a real possibility. It might be that some terrible family issue has arisen, which it's really, really harsh for someone not to be able to make an application in respect of an 18 month disqualification but it wouldn't be open to the Court to say, "Well, I know it says two years but I'm going to ignore that. I'm going to say a discretion in any case where I think it's appropriate. I should have a discretion even if it's less than two years." And at the same time of reasoning has

to apply to the second condition. I only have the discretion, I only have the power, if it's the first such order made within the period of -- made in respect of that person within a period of 10 years. At the time this disqualification was imposed, both by the Circuit Court and then ultimately by the Court of Appeal -- and I think the argument could be made if they fell on either side of the 10 year disqualification that the Court of Appeal was -- disqualification would be from the date it was made, even if it was backdated. I think you could argue that. But, on any view of this, the time on the disqualification was imposed for the accident giving rise -- the terrible accident giving rise to this disqualification. It was within 10 years of the last disqualification. And I really can't say it -- I just won't -- I just can't see any ambiguity whatsoever, despite the view that was taken by whoever wrote the note to the annotated statutes. And I'm ruling that I have no power to alter -- to restore a licence for any period of time in respect of this disqualification. And that's the basis on which I'm making this ruling."

9. The appellant now appeals the decision of the court in refusing his application for a restoration of his driving licence.

Grounds of Appeal

10. The appellant appeals on the following grounds;
 1. The learned judge erred in law and in principle in refusing the appellant's application to restore his driving licence under section 29(1) of the Road Traffic Act, 1961 as amended, in circumstances where the appellant had been disqualified from driving for 5 years in 2007, but had his licence restored in 2009.
 2. The learned judge erred in failing to have any, or any sufficient, regard to the length of the driving disqualification (12 years) and the harmful effect it has had on the appellant's ability to earn an income and provide for his family.
 3. The learned judge erred in failing to have sufficient or any regard to the offer of employment available to the appellant if he can restore his driving licence.
 4. The learned judge erred in law and in fact in failing to apply the principle of proportionality to the length of the driving disqualification which amounts to one third of a working career.
 5. The learned judge failed to have regard to the comments of the Court of Appeal on the 4th of December 2014 which envisaged that the appellant would apply to have his licence restored at some point, and stating that it was conscious of not imposing too long a period when it would be impossible for the appellant to drive.
 6. In all the circumstances the learned judge's refusal of the appellant's application to restore his driving was disproportionate.
11. Although one of the grounds of appeal refers, inter alia, to the personal circumstances of the appellant, i.e., an offer of employment available to him, there was no evidence before

us concerning that. Indeed, it was confirmed to us by counsel that we need only concern ourselves with the issue of the correct interpretation of the statute, and need not concern ourselves with the merits of the claim. In engaging with that issue, the Circuit Court judge had been prepared to presume, although he did not decide, that the application was a meritorious one in terms of its underlying facts and gave his ruling on that basis. We will adopt the same approach.

12. The arguments presented in the court below were reprised before us but were not really supplemented or added to.

The Court's Decision

13. It is quite clear to us that we must dismiss this appeal. We are utterly unpersuaded that there is any ambiguity in the statute. It seems to us that the provision in question is entirely clear. It was the intention of the legislature to restrict a person's ability to apply for the restoration of a driving licence if they had been disqualified from driving for a period of more than 2 years within 10 years of receiving a previous disqualification. We agree with the submission by counsel for the respondent that any other interpretation would require reading additional words into the provision. There is nothing to indicate that such an interpretation was intended. We are therefore satisfied that the interpretation contended for by the applicant/appellant is untenable and we reject it in favour of that contended for by the respondent.

14. The appeal is hereby dismissed.