

173.

ROYAL COURT

16th October, 1989

Before: The Bailiff, and  
Jurats Vint and Le Boutillier

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Police Court Appeal: Andrew Williams

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Appeal against a period of disqualification from holding or obtaining a licence of one month following a conviction under sub-paragraph (b) of paragraph (1) of Article 36 (as amended) of the Road Traffic (Jersey) Law, 1956.

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Advocate S.N. Nicolle for the Crown  
Advocate S. Fitz for the appellant.

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**JUDGMENT**

THE BAILIFF: The appellant in this case was convicted by the learned Relief Magistrate on the 8th September of this year, of what is colloquially known as parking on a yellow line on the 31st July, in Don Street. He is a director of a company known as Bilbo's which is a restaurant, whose premises are close to Don Street. He was not represented but pleaded guilty and was sentenced to a fine of £5 or four days' imprisonment, £10 costs and disqualified from driving for one month. He now appeals against disquali-

fication which in fact is not operative because on the 18th September he was allowed to make a representation to another Relief Magistrate who suspended the operation of the disqualification so that in effect he has served ten days of the disqualification.

In the course of the trial the Centenier who presented the case made a number of observations to the learned Relief Magistrate. First of all he drew attention to the fact that there were a number of fines which had been imposed in the past on the appellant or his company. The first point raised by counsel for the appellant was that it is not appropriate in criminal proceedings for fines levied by the honorary police at parish hall enquiries to be referred to at all because they are not convictions. The authority for that statement, it is suggested, is to be found at page 267 of the work entitled: "A Practical Approach to Sentencing" by C. Emmins where it is said at paragraph 19.3:

"The sentencer must sentence the offender for those matters to which he has pleaded guilty or of which he has been found guilty (the 'conviction offences')".

That is quite true and it is a principle which we follow in this Court. But it cannot be denied that a person who commits a statutory offence which the honorary police are empowered to deal with has nevertheless committed an offence. It would otherwise make a nonsense of a person's record if he could claim that he had no record whereas in fact there was, at police headquarters, a list of fines which had been levied on him by the honorary police in perhaps a number of parishes for traffic offences. It is a statutory requirement that these fines should be notified to the Chief Officer and we were informed by counsel that it is not the practice for a list of those fines or indeed even for the existence of them to be mentioned in considering sentence.

Of course it is quite true that a man is not sentenced on his record and his record is something which of course is taken into account when considering any mitigation. In the view of this Court, although the matter has received in passing a query in the Police Court, and by inference a passing reference in this Court, it has not been adjudicated upon, nor has a

ruling been given. In the opinion of this Court it would be absurd to exclude a list of previous fines by Centeniers in the exercise of their powers for the simple reason that before - as counsel for the Attorney General has said - a Centenier can exercise those powers he has to obtain from the person who is charged with the offences: a) an admission that an offence has been committed, and b) consent for the Centenier to deal with it. There has clearly been therefore an offence; there has clearly been a sanction imposed, and to say that the record of those offences and sanctions is to be shut out from any Court in considering sanctions when an offender is actually presented before that Court would be flying in the face in reality. Therefore the Court rules that those records should be available to a Court when sentencing anyone brought before them. That disposes of the question of the honorary police fines.

Secondly, counsel suggested that there should not have been reference as there was by the Centenier to a number of infractions by Bilbo's itself. It is, as we have said, a registered company and unless there was before the learned Relief Magistrate some further information that the appellant had himself accepted responsibility for those offences, we do not think that the general responsibility which he appears to have accepted in the course of the trial would be sufficient. They were not offences which were properly recorded against him.

The third point which has been conceded by counsel for the Attorney General is that there was a further reference by the presenting Centenier (I do not use the word 'prosecuting' Centenier - that is not what a Centenier does, he presents the case, he is not a prosecutor) to offences which took place after the date on which the infraction itself had occurred. It was conceded that this should not have been mentioned and we entirely agree that that was a proper approach by counsel.

Fourthly, there was a mention of a number of further summonses by the Centenier. He said: "Numerous other summonses are in the course of being served in this case"; that was an unfortunate remark. One does not know whether the appellant would have pleaded guilty to those summonses or not. It was not a proper remark to make and it was not a matter that should have been brought to the attention - even if it were true, and it may well

have been true, we do not make any ruling on that - of the Relief Magistrate.

We come to the last matter: that as a result of these matters we have mentioned, it would appear, she said, that the learned Relief Magistrate used the record to increase the appellant's sentence. We cannot find that he did that, he may well have felt frustrated by the smallness of the fine, it is ridiculous today that parking on a yellow line should only attract a £5 fine. That amount has been unchanged since 1979, I think, looking at the legislation, but we must take it as we find it, it is high time it was increased to a realistic figure. If it is suggested (and this is purely obiter) that the honorary police had been in the habit of increasing the amount an offender has to pay by fining him £5 and adding £15 for costs, that is a practice which we deprecate.

Lastly counsel said that even if we were to rule against her on all the other points and as she will have gathered we have not, disqualification would have been inappropriate in this case. We do not find ourselves able to accept that argument. We think that the real position is that the appellant seems to show a disregard for parking problems. As counsel for the Attorney General pointed out when he was asked whether he accepted responsibility for his business, and of course in strict law we have distinguished between his responsibility and that of the company, he nevertheless said (and I quote from page 3 of the transcript): "Well, we've got nowhere else to park them, you see", which indicates a fairly cavalier attitude to the restrictions which are imposed on all citizens for the purpose of trying to prevent chaos in the town. We cannot find that it was inappropriate to impose a sentence of disqualification in addition to the fine, but under the circumstances we think that one month was excessive having regard to the fact that he really only had one previous conviction. Therefore accordingly we will reduce the period of disqualification to that of 10 days. Miss Fitz, I think on the whole you have succeeded, so I will give you your costs.

Authorities referred to:

"A Practical Approach to Sentencing" by C. Emmins, at pp 73, 75, 265, 267 to 269 inclusive and 271.

Archbold Criminal Pleadings Evidence and Practice (43rd edition) at pp 622 to 626 inclusive.

D.A. Thomas' Principles of Sentencing (2nd edition) at pp 41 to 44 inclusive, pp 46 to 48 inclusive and at pp 350 to 352 inclusive.

Wilkinson's Road Traffic Offences (14th edition) at pp 1/441 and 1/442.

R -v- Queen 1981 Cr. App. R(S) 245.

A.G. -v- Timothy John Freemantle (24th February, 1986) Jersey Unreported.

A.G. -v- N.P. Kerrell (24th June, 1988) Jersey Unreported.