

ROYAL COURT
(Samedi Division)

73.

21st April 1997

Before: F.C Hamon Esq, Deputy Bailiff and
Jurats Vibert and Jones

Police Court Appeal (the Relief Magistrate)

Victor Miguel Freitas Rodrigues

-v-

The Attorney General

Appeal against a sentence of a fine of £125, or 2 weeks imprisonment in default of payment, with 6 months disqualification from driving imposed by the Relief Magistrate on 20th February, 1997, following a change of plea to guilty on;

1 count of contravening Article 13A(1)(aa) of the Road Traffic (Jersey) Law, 1956, as amended by driving a motor vehicle at 54 mph on a road subject to a 30 mph. speed limit.

Appeal allowed; sentence of disqualification from driving reduced to 3 months.

THE DEPUTY BAILIFF: With a disqualification from driving of six months imposed by the Relief Magistrate on the 20th February of this year for an infraction of Article 13A of the Road Traffic Jersey Law, 1956, as amended there was imposed a fine of £125. The disqualification has been suspended pending this Appeal. The facts are easily stated.

The Appellant was caught in a radar check as he was driving his car along the coast road at Grève d'Azette towards Millards Corner. It is a 30 mph zone and he was driving at 54 mph. His speed was monitored on a new radar unit which the States Police are now using. It is said to be extremely accurate.

We have to note that the Appellant has convictions for several motoring offences and it is noteworthy that on the 15th November of last year he was fined £75 with no disqualification for driving at 55mph in a 40mph zone. There is really one ground of appeal and that is that the Relief Magistrate did not allow the Appellant the opportunity to mitigate and or obtain legal advice. We will note in passing what was said in Kane -v- A.G. (1965) JJ 501 about deterring not only the person convicted but also others:

"We therefore find that the fact that the livelihood and employment of the Appellant is dependent on his holding a driving licence is not a good ground of appeal".

There is more than that. The learned Relief Magistrate, it must be said, gave the Appellant no opportunity to express the grounds of mitigation that he might have made, nor does he appear even to have even considered the record of the Appellant.

The record, as we have said, is not a good one. There have been five previous disqualifications, the last in 1990. In any event the prosecution accepts the irregularity which is in our view material. There is furthermore this exchange in the transcript that again disturbs us, and it occurs where the case is coming up for its second hearing. The exchange goes like this:

Centenier Miles: "Sir I understand that Mr Rodrigues has reappeared in Court asking your permission Sir if he could change his plea

This is the gentleman who questioned the validity of the speeding with a radar gun."

Judge Day: "Oh I see. Well if he wishes to, yes that's his choice, he's presumably had a chat with somebody, has he"

Centenier Miles: "Sir perhaps he can advise"

Judge Day: "Yes you're prepared to change"

Defendant: "Yes I do apologise for my attitude before, its just "

Judge Day: "Yes, you were a bit upset"

Defendant: "If I don't plead guilty I'll risk my marriage, and I do not want to"

Judge Day: " Right, so now we have got a case where it was 54mph in a 30mph zone. is that right?"

and the case then proceeds on a plea of guilty.

In the circumstances we could remit the case back to the learned Magistrate for a decision, but we feel, after deep consideration that it would be invidious to do so because the conclusion of that Court is almost self-evident. We are prepared to allow concession but the accused's record and the fact that he was driving at such a speed in a 30mph zone cannot be allowed to pass unobserved and therefore, Mr Crane, despite your very powerful address we are going to impose a disqualification but it will be a disqualification for three months in the circumstances.

Authorities

Kollins -v- A.G. (17th February 1992) Jersey Unreported

Reid -v- A.G. (21st March 1994) Jersey Unreported

Mercier -v- A.G. (1989) JLR.N.10

Kane -v- A.G. (1965) JJ.501.