



SHERIFF APPEAL COURT

**[2016] SAC (Crim) 1
SAC/2015/000098/AP**

Sheriff Principal C A L Scott QC
Sheriff J Beckett QC

OPINION OF THE COURT

delivered by SHERIFF J BECKETT QC

in

APPEAL AGAINST SENTENCE

by

ANDREW JACKSON

Appellant;

against

PROCURATOR FISCAL, PERTH

Respondent:

**Appellant: Stephenson; Hodge Solicitors LLP
Respondent: McFarlane, AD; Crown Agent**

13 January 2016

[1] The appellant pled guilty in the Justice of the Peace Court at Perth to driving without a licence and without insurance, both charges being subject to a bail aggravation. He does not appeal against the endorsement of six penalty points, only the fines which were imposed. On charge 2 the Justice fined the appellant £120 discounted from £180 to include

£20 for a bail aggravation and on charge 3 £340 was discounted from £510 including £40 for a bail aggravation.

[2] The Justice says that he took account of the appellant having been kept in custody overnight before his appearance in court. He was aware that the appellant was unemployed and in receipt of benefits of £115 per fortnight with regular expenses of £50 per fortnight. He explains that he considered it appropriate to impose fines comparable to fixed penalties. He allowed the fines to be paid by instalments of £10 per fortnight. Accordingly it will take 92 weeks for the fines to be paid. Both on passing sentence and in his report to this court the Justice has suggested that if the appellant can find work he can clear the fines more quickly.

[3] Mr Stephenson, Solicitor-Advocate for the appellant submitted that the Justice erred in this respect and also that the fines were excessive having regard to the appellant's means. He referred to the opinion of a court of five judges in *Paterson v McGlennan* 1991 SCCR 616.

[4] Whilst the Justice had some discretion as to the level of fines to impose and the time within which they were to be paid, he was bound by the Criminal Procedure (Scotland) Act 1995, section 211(7), to have regard to the appellant's means so far as known to the court. We consider that the Justice was not entitled to proceed upon the basis of possible future developments which had no foundation in the information before him.

[5] The High Court of Justiciary has indicated on a number of occasions that when a fine is to be paid by instalments it ought to be capable of being paid in about a year. *Paterson*, being a decision by a court of five judges, provides a good example. In that case, the court considered that as the fines would take 90 weeks to pay, and it was not satisfactory in view of the appellant's income to increase the instalments, they were excessive.

[6] Whilst each case will depend on its own circumstances and we do not consider that there can be an absolute rule, we are persuaded that in this case it is not appropriate to increase

the instalments and that the period of 92 weeks confirms that these fines should be seen as excessive and amounting to a miscarriage of justice. Accordingly, on charge 2 we will impose a fine of £60 reduced from £90 for the plea of guilty and on charge 3 a fine of £165 discounted from £250. The total of £225 can be paid at £10 per fortnight.

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