SHERIFF APPEAL COURT

[2017] SAC (Crim) 8
SAC/2017-000113/AP
SAC/2017-000114/AP

Sheriff Principal C D Turnbull
Sheriff A L MacFadyen
Sheriff S F Murphy QC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL C D TURNBULL

in

SENTENCE APPEALS

by

ROBERT LAIDLAW

Appellant

against

PROCURATOR FISCAL, LIVINGSTON

Respondent

Appellant: Mackintosh; John Pryde & Co SSC for Fraser & Co, Livingston
Respondent: Cameron, Sol. Advocate AD; Crown Agent

23 May 2017

[1] On 30 January 2017 the appellant appeared at Livingston Sheriff Court on two complaints.

[2] The appellant pled guilty to the following charges on the first complaint:

(002) on 2nd December 2016 on a road, namely Cousland Crescent, Seafield, West Lothian you ROBERT JAMES LAIDLAW being a person disqualified for holding or obtaining a licence to drive a motor vehicle did drive a motor vehicle, namely motor car registered number SE05AXM while so disqualified;

CONTRARY to the Road Traffic Act 1988, Section 103(1)(b)

(003) on 2nd December 2016 on a road or other public place, namely Cousland Crescent, Seafield, West Lothian you ROBERT JAMES LAIDLAW did use a motor vehicle, namely motor car registered number SE05AXM without there being in force in relation to the use of said motor vehicle by you such a policy of insurance or such a security in respect of third party risks as complied with the requirements of Part VI of the Road Traffic Act 1988;

CONTRARY to the Road Traffic Act 1988, Section 143(1) and (2) as amended

[3] The appellant pled guilty to the following charges on the second complaint:

(002) on 23rd January 2017 on a road or other public place, namely High Street, Union Street and elsewhere all Linlithgow, West Lothian you ROBERT JAMES LAIDLAW did drive a mechanically propelled vehicle, namely motor car registered number FL08OOY dangerously and did drive at excessive speed and enter and drive along the opposing carriageway when it was unsafe to do so;

CONTRARY to the Road Traffic Act 1988, Section 2 as amended

(003) on 23rd January 2017 on a road, namely High Street, Union Street and elsewhere all Linlithgow, West Lothian you ROBERT JAMES LAIDLAW being a person disqualified for holding or obtaining a licence to drive a motor vehicle did drive a motor vehicle, namely motor car registered number FL08OOY while so disqualified;

CONTRARY to the Road Traffic Act 1988, Section 103(1)(b)

(004) on 23rd January 2017 on a road or other public place, namely High Street, Union Street and elsewhere all Linlithgow, West Lothian you ROBERT JAMES LAIDLAW did use a motor vehicle, namely motor car registered number FL08OOY without there being in force in relation to the use of said motor vehicle by you such a policy of insurance or such a security in respect of third party risks as complied with the requirements of Part VI of the Road Traffic Act 1988;

CONTRARY to the Road Traffic Act 1988, Section 143(1) and (2) as amended

[4] In relation to the first complaint, on charge (002) the appellant was sentenced to eight months imprisonment and disqualified from driving for life; on charge (003) the court admonished the appellant and made an order for endorsement.

[5] In relation to the second complaint, on charge (002) the appellant was sentenced to four months imprisonment and disqualified from driving for six years and until the extended driving test had been passed; on charge (003) the appellant was sentenced to eight months imprisonment and disqualified from driving for life; and on charge (004) the court admonished the appellant and made an order for endorsement.

[6] No appeal is taken in respect of the custodial sentences imposed. The appeals are directed against the sheriff's decisions to disqualify the appellant for life. The circumstances which led the sheriff to those disposals are best understood from a consideration of the appellant's record.

[7] The appellant is 26 years of age. He has been disqualified from driving on ten separate occasions. He was first disqualified when only 16 years of age. Since that first disqualification, there has only been a single period of thirteen months during which the appellant was not disqualified from driving. The court was advised that the appellant has never held a driving licence; the appellant sat and passed the theory test, however, was disqualified before he could sit the practical driving test.

[8] Of the ten periods of disqualification previously imposed upon the appellant, seven were for contraventions of s.103(1)(b) of the Road Traffic Act 1988, namely, driving whilst disqualified. As at the date of sentencing by the sheriff, four of those periods of disqualification were extant. One of these periods has since expired. Those which remained extant as at the date of the hearing of the appeals were for eight years (expiring in 2020); eight years (expiring in 2023); and ten years (expiring in 2026) respectively. The last period of disqualification was imposed in June 2016, at which time the appellant was sentenced to eight months imprisonment.

[9] In his detailed and helpful report, the sheriff, correctly in our view, describes the appellant's conduct as being very serious and concerning having regard to his protracted and appalling record for defying court orders by driving while disqualified. The appellant's situation is not assisted by the circumstances of the dangerous driving charge on the second complaint: the sheriff describing this as an attempt to escape from the police whilst driving at excessive speeds and overtaking other vehicles on the wrong side of the road whilst approaching a blind corner. The police required to abandon their pursuit of the appellant for reasons of public safety. It is pertinent to note that this is the appellant's first conviction for dangerous driving; a worrying deterioration in an already concerning set of circumstances.

[10] The sheriff also reports that the appellant's record discloses numerous breaches of other types of court orders and a significant number of his previous convictions being aggravated by the fact that the appellant was on bail at the time they were committed. In imposing the custodial sentence he did, namely, eight months, the sheriff's starting point was the maximum permitted under the relevant legislation, namely, twelve months. No appeal is taken against the custodial sentence. On one view the appellant was fortunate to receive the discount he did having regard to his record of analogous offending (see *Coyle* v *HM Advocate* 2007 SCCR 479 and *Gilchrist* v *PF Dumbarton* [2016] SAC (Crim) 28).

[11] Accepting that the appellant had a bad record, counsel argued that the previous lengthy periods of disqualification had clearly not worked. He contended that what would make the appellant change his ways was prison. Counsel relied on *R* v *Shirley* [1969] 1 WLR 1357 and, in particular, the passage at 1358E in which Sachs LJ said:

"This court desires to emphasise a point, which it is thought has already previously been mentioned in other divisions of this court. Long periods of disqualification from driving may prove a very severe handicap to a man when he comes out of prison and desires to pursue a different type of life to that which has led him into that prison. Such periods of disqualification may shut out a large sector of employments, especially in certain areas. Moreover, if the length of disqualification is overlong and amounts to a period such as a decade, the position may well seem hopeless to the man — and that of itself sows the seeds of an incentive to disregard the law on this point. However wrong such an attitude may be, it springs from a human factor which it is wise to take into account."

Counsel also relied upon the decision of Phillimore LJ in *R* v *North* [1971] RTR 366 at 367-8:

"It is, of course, true that the appellant is a man with a bad record of motoring offences, and indeed he has offences of other types also, but when he appeared … and was dealt with for taking and driving away a motor vehicle without consent, no insurance, driving while disqualified and dangerous driving, he was sentenced to three months' imprisonment and then disqualified from driving for life. Unless, of course, there was some very unusual circumstance, which it does not appear that there was, that was a sentence which in the view of this court was clearly wrong in principle.

It has the result, with a man like this and in modern conditions when driving is almost essential for so many people, that inevitably he is going to be caught every year or so driving and sent back to prison."

[12] Counsel commended these cases to us as being both relevant and of assistance. He conceded that a ban of ten years of more could not be complained of, however, maintained that there was a significant difference between a determinate ban of such a length and the indeterminate ban imposed by the sheriff, notwithstanding the provisions of s.42 of the Road Traffic Offenders Act 1988. Counsel contended that the significant difference was that the period of disqualification would be determinate, as opposed to an indeterminate period

with the appellant having the right to apply for the disqualification to be removed after a determinate period.

[13] Whilst, like all cases of this type, *Shirley* and *North* turn on their own facts, it would appear to be well established in England that a sentence of disqualification for life should only be passed in very unusual circumstances. In neither *Shirley* nor *North* was the statutory predecessor of s.42 considered in the context of an indeterminate period of disqualification. In Scotland, it is clear that the matter is one for discretion; see *Thomas* v *HM Advocate* 2001 GWD 24-913.

[14] Delivering the opinion of the court in Thomas, Lord Prosser said:

> *"The matter is one for discretion and when one imposes a sentence of disqualification, whether determinate or indeterminate, it comes inevitably with the qualifications imposed by Parliament. In relation to an indeterminate sentence it appears to us that that is an important part of what is being done because if the Court does not see the facts as justifying any specific term for disqualification, it is important that the decision as to whether he may have changed his ways and may be allowed back on the road is taken at the appropriate time in the light of the then circumstances. We see nothing wrong with that and we would observe that in this particular case if he wishes to do so he will be able to come back in 5 years. That is the same period within which he could come back if a long determinate sentence such as 10 years were imposed."*

[15] In our view, the submissions made on behalf of the appellant are misconceived. The concession, correctly made, that disqualification of a period of ten years of more could not be complained of, has the effect of removing any weight that could be attached to the decision in *Shirley*. Prison has clearly not worked. The appellant has continued to drive whilst disqualified. There comes a time when the court must say enough is enough. That time has come in relation to the appellant. He has

demonstrated a flagrant disregard for the law over a number of years. As we have noted, on one view, he was fortunate to receive the custodial sentence he did. In cases such as this one, the maximum custodial term available to the court for a contravention of s.103(1)(b) of the Road Traffic Act 1988 (which is twelve months irrespective of the mode of prosecution) can often seem inadequate. Standing the nature and extent of the appellant's record, it cannot be said that, in this particular case, disqualification for life is excessive. If, as he asserts may happen, the appellant changes his ways, it will be open to him to make application to the court for removal of the disqualifications in terms of section 42. Both appeals are refused.