

Judgment 2/2010

**Samantha Josephine Brehaut – Royal Court (Criminal Appeal
No 17 of 2009) – 6 January 2010**

Criminal Appeal from the Magistrate’s Court – sentence appeal – driving at 47 mph in a 25 mph zone – held that Appellant’s mistaken belief that it was a 35 mph zone was no mitigation – held that 2 months licence suspension was not manifestly excessive – appeal dismissed

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of January, 2010 before Richard John Collas, Esquire, Deputy Bailiff; present: Stephen Edward Francis Le Poidevin, Alan Cecil Bisson and Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte and Stephen Murray Jones, Esquires, Claire Helen Le Pelley, Peter Sean Trueman Girard, Esquire and Constance Adele Elizabeth Helyar-Wilkinson, Jurats.

No.17 of 2009

In the action of THE LAW OFFICERS OF THE CROWN against SAMANTHA JOSEPHINE BREHAUT to pursue the appeal of which the said Brehaut gave notice against the sentence imposed upon her in the Magistrate’s Court on the 2nd day of December, 2009 in the terms attached hereto;

THE COURT having heard Advocate G. Perry for the Crown and the Appellant in person, DISMISSED the Appeal.

S M SIMMONDS
Her Majesty’s Deputy Greffier

PROCUREUR

6.1.10

THE LAW OFFICERS OF THE CROWN

ACTION

SAMANTHA JOSEPHINE BREHAUT

to pursue the appeal of which the said Brehaut gave notice against her sentence in the Magistrate's Court on the 2nd day of December 2009 in respect of an offence of driving a motor vehicle on a public highway at a speed exceeding 25 miles per hour contrary to Section 2(a) of the Road Traffic (Speed Limits and Trials) Ordinance 1987, in respect of which the Court sentenced her to pay a fine of £150 or in default of payment of such fine to undergo imprisonment for a period of 7 days and, furthermore, disqualified her from holding or obtaining a driving licence in all categories for a period of 2 months;

the whole as recorded by an Act of Court of the said 2nd day of December 2009, a copy of which Act of Court, together with a transcript of proceedings, was annexed to the summons served upon the said Brehaut.

And the said Law Officers claim costs.

Address for Service:

Datha,
Les Eturs,
Castel

**Approved Text
6 January 2010**

**In the Royal Court of Guernsey
On Appeal from the Magistrate's Court**

Samantha Josephine BREHAUT

Wednesday 6th January 2010

Before Richard John Collas, Deputy Bailiff

**Jurats: S E F Le Poidevin, A C Bisson, S Mowbray, M Tanguy, B Bartie, D Le Conte, S M
Jones, C Le Pelley, P Girard, C Helyar-Wilkinson**

Appeal Against Sentence Heard 6th January 2010

Advocate for the Appellant: Unrepresented
Advocate for the Respondent: G S Perry

1. Samantha Josephine Brehaut, in the Magistrate's Court on the 2nd December 2009, you pleaded guilty to driving on a public highway at a speed exceeding 25 mph, contrary to Section 2(a) of the Road Traffic (Speed Limits and Trials) Ordinance, 1987.
2. A Police Officer had observed you at De Beauvoir, St Peter Port on 31stth October at 1.00am driving at 47 mph.
3. You told the Judge of the Magistrate's Court that you had no idea it was a 25 mph speed limit in that road and thought it was a 35 mph zone. The Judge was aware that you had no previous convictions and he said he took that into account.
4. The Judge then imposed a fine of £150 and disqualified you from driving for 2 months.
5. You have appealed against that sentence citing, in effect, three grounds of appeal. The first is that in the same Court a friend of yours was suspended from driving for only one month and fined only £120 for doing 46 mph. The second ground is that whilst you were waiting in Court, the Judge said when sentencing two other people that he took into account there were no other vehicles on the road and the time of night but did not say the same when sentencing you. The third ground is that from reading the Press, you do not understand why others have done worse and received very different punishments.
6. Regarding the first ground of appeal, the prosecuting Police Sergeant outlined the facts of the offence to the Judge. He told him that it occurred at about 1.00 am, that at the time it was dry and dark and that there were no other aggravating features. You had the opportunity to address the Judge and did not offer any mitigation except that you thought it was a 35 mph zone.
7. The role of the Judge in sentencing is to take account of all the facts put before him as to the circumstances of the offence, including any aggravating factors and the circumstances of the

defendant including, where relevant, any personal mitigation. He is deemed to have done so. In your case, if there had been any aggravating features, it is likely that he would have said he had taken them into account as such facts would have justified a stiffer penalty than normal. Similarly, if you had put forward any personal mitigating facts, it is more than likely that he would have said whether or not those had been taken into account. As it is, the only fact you put forward was your misunderstanding as to whether the road was in a 25 mph zone, and that is no mitigation.

8. We do not normally comment on the sentences handed out in other specific cases as we do not normally have the full facts before us but on this occasion I have listened to the recording of what was said in Court regarding Ben Youlton and there are two significant matters. The first is that he was doing 46 as opposed to 47 mph. The second, that may have influenced the Judge is that there was an error in the drafting of the charge laid before the Court in that the time of the offence was incorrect and had to be amended. Some defendants might have taken issue with such an error but Mr Youlton did not do so and pleaded guilty. The Judge did not say so but he might have given him some credit for being reasonable about it.
9. As for what you have read in the Press, such reports must always be read with care, they are not always accurate and do not always report all the relevant facts of a case.
10. Having said all of that, we have to decide whether the sentence was, in all the circumstances, manifestly excessive.
11. We are aware that the general policy of the Courts is that when someone has exceeded the speed limit by more than 20 mph, they can expect to receive a 2 month licence suspension unless there are aggravating or mitigating factors. In your case there were no such factors present, the fact that it was late at night, dark, dry and the road was clear is not a mitigating factor. Had the conditions been otherwise, they might have been aggravating factors justifying a longer period of suspension or heavier fine but they are not mitigation.
12. As we said in an appeal heard on 8 January 2008 where someone's licence had been suspended for driving at 47 mph in the 25 mph area at Le Vauquiedor, we are satisfied that the sentence is consistent with penalties generally imposed for similar speeds in a 25 mph zone. We can not say that it is manifestly excessive.
13. The Appeal is therefore dismissed.