

IN THE ROYAL COURT OF GUERNSEY

Between:

JAMIE MARTIN BOOKLESS

**Appellant
("A")**

-and-

THE LAW OFFICERS OF THE CROWN

**Respondents
("R")**

Appeal in relation to Special Reasons and Sentence

Application heard on: 25th February, 2019

Decision handed down on: 18th March, 2019

Before: John Russell Finch, Esq., O.B.E., Judge of the Royal Court

The Appellant represented himself.

Advocate R J Calderwood appeared for the Respondents

Materials referred to in Judgment:

Wilkinson's Road Traffic Offences (28th edition) paragraphs 21-04 to 21-17

The Magistrate's Court (Criminal Appeals) (Guernsey) Law 1988, Section 6(1)(b)

DPP v Murray [2001] EWHC Admin 848;

Nicholson v Brown [1974] RTR 177;

R (Alma) v DPP [2009] EWHC 2703;

R v Wickens (1958) 42 Cr. App. R. 236

Renison v Knowler [1948] 1 KB 488

Siegel v Procurator Fiscal, Lerwick [2016] SC LER 49;

Smith v Henderson 1950 SC (J) 48.

DECISION

Introduction

1. On the 4th January 2019, the Appellant (“A”), having pleaded guilty to an offence of using a motor-vehicle with no third-party insurance at a hearing on 12th December 2018, was sentenced to pay a fine of £300 and was disqualified in all categories for 12 months. A had submitted special reasons in respect of the mandatory disqualification – which under Guernsey law has to be for a minimum of 12 months. However, having heard evidence and received submissions, his plea regarding special reasons for non-disqualification was rejected. On 16th January, 2019 a Notice of Appeal was issued and the appeal was heard on 25th February, 2019. Again, full legal submissions were made and skeleton arguments produced by both A and the Respondent Law Officers (“R”). It should be noted that A is a lawyer of some years’ experience, qualified in Scotland and whilst not a criminal litigator was fully able to prepare his case and present it properly. Furthermore, it is important to note also that A’s honesty and integrity were not in dispute. This was made clear on behalf of R throughout and accepted by the Magistrate’s Court and this Court. The offence is one of strict or absolute liability and can be committed without any intention or moral fault. What happened here, and this does not affect the merits of appeal, was a mistake by A, who has never sought to lie or deceive anyone.
2. There is no dispute on the facts. Indeed both parties agree that the question for consideration is as set out in R’s skeleton at paragraph 15, viz:

“On the particular facts as found by Judge McKerrell, and after giving himself proper directions and applying proper considerations, was it reasonable for him to conclude, as a question of law, that the Appellant’s belief that he was insured, although honest, was not based on reasonable grounds?”

If this were on appeal by Case Stated in England the question for the opinion of the High Court would be couched in similar terms. I would slightly tighten-up the wording, as follows:

“On the facts found in the Magistrate’s Court, was the Court right to conclude, as a matter of law that the Appellant’s belief that he was uninsured, although honest, was not based on reasonable grounds, so that special reasons were not established?”

This is a question of law, the facts, as stated, are not in dispute. Hence the appeal falls to be determined by the Judge alone. It boils down to whether the correct test for special reasons was applied, and, if so, whether it was applied properly on the facts in the case. We have the benefit of a considered judgment in the Magistrate’s Court, which amply demonstrates Judge McKerrell’s reasoning (pages 44-47 of transcript).

Applicable Legal Principles

3. These can be found in the classic text of *Wilkinson’s Road Traffic Offences* (28th edition) at paragraphs 21-04 to 21-10, and in relation to insurance offences at paragraphs 21-11 to 21-17. It is to be noted that most of the cases cited refer to the endorsement of a driving-licence, which is not done in Guernsey; a minority refer to compulsory disqualification, which was the case in England prior to 1965 for insurance offences, and is the case both in England and Guernsey for excess alcohol offences (other than “in charge” matters). *Wilkinson* and both A and R also refer to relevant Scottish decisions. A produced a bundle of documents, including 11 relevant decided cases.
4. The most helpful working definition of the criteria needed to find special reasons is in R v Wickens (1958) 42 Cr. App. R. 236. Such a matter must:

- (i) be a mitigating or extenuating circumstance;
- (ii) not amount in law to a defence to the charge;
- (iii) be directly connected with the commission of the offence; and
- (iv) be one which the court ought properly to take into consideration when imposing sentence.

It is pointed out in *Wilkinson* (21-05) that “*the triviality of an offence could appear to meet all four criteria*”. Reference is made to a case produced by A. Smith v Henderson 1950 S.C. (J) 48. There the element of danger to the public was absent, that was the mischief aimed at and therefore special reasons were found. But this was expressly disapproved in England in Nicholson v Brown [1974] R.T.R. 177, where Lord Widgery CJ made it very clear that triviality could not amount to a special reason:

“I would not accept the proposition that if a man is guilty of driving without due care and attention he can be excused endorsement of his licence on the basis of special reasons merely because it was not a bad case, or merely because the degree of blameworthiness was slight.”

5. A large number of decided cases refer to no insurance offences. One leading case, referred to by A and included in his bundle is Renison v Knowler [1948] 1 KB 488, where at 494 Lord Goddard CJ said:

“The obvious duty, therefore, of the owner is to see that he is insured and to make himself acquainted with the contents of his policy. He is not obliged to have a motor vehicle, but, if he does, he must see that he has such a policy as the law requires Belief, however honest, cannot in our opinion, be regarded as a special reason unless it is based on reasonable grounds.”

As *Wilkinson* puts it (at 21-12), “*But the defendant must show that he was in some way misled*”. Both A and R alluded to the more recent case of R (Alma) v D.P.P. [2009] EWHC 2703. The Divisional Court upheld the justices’ refusal to find special reasons where the appellant honestly but mistakenly believed that the person he permitted to drive his car was insured to do so. He hardly knew this individual and had not spoken directly. He had been present when another person spoke to the driver by telephone, in a language the appellant did not understand, and the third party told the appellant that this person was insured. The appellant also knew that the driver had previously driven vehicles in the United Kingdom. Davis J stated that, although the appellant’s belief could not be described as “*groundless*”, the appellant did not have “*sufficient and reasonable grounds*” for permitting the other person to drive his car. He emphasized that this is “*simply a fact-specific decision*” and although the result might be thought hard, it is “*for policy reasons understandably so*”.

6. A also put the case of Siegel v Procurator Fiscal, Lerwick [2016] SC LER 49 before the court. There an 18 year old had entrusted his mother (who owned the car in question) with insuring it. For some reason the young man was not a named driver on the policy. The car was at his disposal and he was the main user of it. The appellant made no specific enquiry of his mother on insurance and did not ask to see the policy. The nub of the Sheriff’s decision is that considering his age he:

“... was entitled to rely on the arrangement that he had made with his mother and in the absence of any intimation by his mother to the contrary he was entitled to assume that the arrangement had proved to be effective. I do not consider that it was necessary for him to make any specific enquiry of his mother or to inspect the policy of insurance before taking it to the road.”

It was emphasized that each case turns on its own facts.

“Either the facts of the case amount, in law, to special reasons or they do not.”

Relevant Facts

7. As indicated, there is no real or material dispute on the surrounding circumstances. It has to be noted that in considering the facts and the legal position, it is clear that the onus is on A to establish that special reasons apply on the balance of probabilities. Back on 2nd November 2018, it was noted that a Toyota Aygo had a disc showing expired insurance and A was issued with a notice to produce. The relevant policy had expired on 27th July, 2018. The Toyota was purchased in the summer of 2017. A had phoned Islands Insurance and explained the situation when purchasing this vehicle. The policy would be the same as that already existing for their other car, already insured, with the policy in the wife, Emily’s, name and with A as a named driver. Payment was made from their joint account. A certificate was issued for the Toyota, it was addressed to A’s wife and he did not read it. He had been told by Islands Insurance that he was okay to drive when he asked on the phone. During the 12 month period of cover, A did not have any conversations with his wife regarding the insurance. They unfortunately separated in January, 2018 and started living apart. A took the Toyota with him. He did not know that the insurance ran until July 2018. He did not know that he was uninsured and would never have driven the car had he known.
8. Car insurance was not one of *“the whole litany of things”* that were discussed on the financial aspects of the separation. As A put it (page 21 of transcript):

“... unfortunately car insurance was not something that was on that list because in my mind Emily was still responsible for that but that was something that would be dealt with obviously in time.”

There were conversations about home and health insurance. A’s wife renewed the policy for the Mazda she had retained in February, 2018. She advised the insurers of the separation and considered that they would contact A about the Toyota insurance. This was not mentioned at the time to A, for as his wife put it *“relations at that point were not hugely positive”*. (She summarized the position at the end of her cross-examination at page 29).

9. Whilst in the UK, A had been used to a rolling-over insurance arrangement. *“My previous experience of car insurance is in the UK where a policy continues on unless either party brings it to an end. I have now learned that this is, of course, different to the Guernsey system whereby a policy lasts for a year and then requires to be renewed. I was not aware of this previously”* (page 9 of transcript). A told Advocate Calderwood that no-one had misled him and he believed insurance was still in place for the car *“by virtue of my reliance upon Emily to deal with it”* (page 17). He had been driving for a number of months uninsured. At page 18 at the end of cross-examination, A accepted that the topic of insurance did not cross his mind during the period of separation. He accepted he had had *“an awful lot to think about at that time”*, responding, *“Being honest, yes I did. I know that’s not an excuse, but it’s unfortunately the reality just at that time”*. When closing, A added that 2018 was a very difficult year of his life *“and I accept that it was perhaps as a result of having to focus on everything else that the issue of insurance was somehow missed”*.
10. The nub of R’s argument, both written and in oral submissions is to be found set-out at paragraph 20 of the skeleton. It is worth quoting in full as it reflects the facts in this case:

“Ultimately the Appellant, as a motor car driver, had a responsibility to ensure that he was insured to drive, and could not delegate that responsibility to anyone else. It is not being suggested by the Appellant that he was given misleading information by anyone, rather it is apparent that he made assumptions about what others would do, and omitted to check his insurance status for a number of months.”

Conclusions

11. The case of Smith v Henderson (supra) was expressly disapproved in England (Nicholson v Brown (Supra) and later cases). It has to be regarded (to repeat the principle) as one depending on its own particular set of facts. With great respect, the decision not to endorse at first instance was explicable, and the appeal result a reaction to the Prosecution bringing an appeal on a point of law with a factual background of a very trivial offence. I set this out because on the merits I might have grasped the nettle and come to the same conclusion. Appeals on a point of legal principle should be based (as Lords Carmont and Russell recognized) on more meritorious cases. Be that as it may, it is the line of English cases that it is proposed to follow, and they are pretty consistent (see, e.g. D.P.P. v Murray [2001] EWHC Admin 848). The interesting decision of the learned Sheriff in Siegel (Supra) also goes to the boundary of the scope of special reasons, but is plainly explicable on the facts. There was, for some reason an error or omission from an 18 year old’s mother on the question of insurance, which he had entrusted to her. As the Sheriff concluded, *“he had done what was necessary”*. It was *“in the particular circumstances of this case”* that the defendant there was entitled to rely on his mother. This only re-emphasizes the point that every case is facts-specific and unique; a proposition which will be repeated.
12. In this case, the photograph taken by the Special Constable on 2nd November 2018 shows an insurance disc with an expiry of *“AUG 17”*. It may be simplistic, but it did not require a lot of effort to gaze at the windscreen and take remedial action of some sort. The offence had gone on for a long time – since July of that year. On the facts of this case, A made several assumptions that proved to be incorrect. This is explicable against the background of the separation, which would have affected both himself and his wife. He has failed to establish special reasons on a balance of probabilities and the Judge of the Magistrate’s Court got it right on the particular facts of the case and for the right reasons.
13. It follows that this case is also fact-specific, the circumstances are unusual. If an authority for anything it is that each case falls to be determined on its own circumstances, there is no general finding of principle beyond that. It is also worth remembering that the finding of special reasons does not automatically entail no disqualification. There remains a power to disqualify. In the present case, public policy considerations, i.e., the consequence of an accident, especially involving personal injury, during the period of months when no insurance was in force, would outweigh sympathy for A and the recognition of his personal honesty. Hence, a court might well have still anyway imposed a lengthy period of disqualification. The fine of £300 was in accordance with the guidelines in the Magistrate’s Court. It was, in my prima facie view, not wrong in principle and properly imposed. It would be necessary to assemble the Jurats together to consider this part of the sentence. If A wishes the fine to be appealed a sitting will be arranged for that purpose. The disqualification, however, stands from the 4th January, 2019. There will be no order for costs, as there was an arguable case.

Decision

14. Appeal in relation to special reasons on disqualification dismissed.

**J R Finch, O.B.E.,
Judge of the Royal Court**

Dated this, 18th March, 2019