

Driving whilst under the influence of excess alcohol, failing to display an ‘L Plate’ while holding a provisional licence, driving without the supervision of an appropriate person, driving without third-party insurance and failing to surrender to custody.

[2023]GRC069

**ROYAL COURT  
FULL COURT**

**8 December 2023**

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:  
Stephen Murray Jones OBE, David John Robilliard, Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin, Felicity Quevâtre, James Robert Toynton and Jillian Clark.**

**THE LAW OFFICERS OF THE CROWN**

- v -

**VAIRIS ZVEJNIEKS**

**Advocate P F Cobb appeared for the Crown**

**The Defendant represented himself**

**An Interpreter assisted the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

Mr Zvejnieks you have pleaded guilty to five Counts on one Indictment. The first is driving whilst under the influence of excess alcohol, for which the maximum penalty is 12 months and/or a Level 5 fine. The second is of failing to display an ‘L Plate’ while holding a provisional licence which carries a fine of Level 3. The third is of driving without the supervision of an appropriate person which carries a fine of Level 4. The fourth is of driving without third-party insurance which has a maximum penalty of 3 months and/or a Level 4 fine. For the driving whilst under the influence of excess alcohol and the third-party insurance you are also liable to be disqualified from driving and that must be for 12 months in respect of the no insurance. For the 5<sup>th</sup> Count of failing to surrender to custody, the maximum penalty is 12 months and/or a fine.

The facts are that at 1.40 pm on 29<sup>th</sup> May, 2023 a public holiday, an off-duty police officer was travelling near the Imperial Hotel. He was following you as you were driving and noticed that, when you overtook a cyclist, you clipped a bank. He caught up with you as you drove towards the airport and noticed that you were swerving all over the road and trying to overtake another vehicle. He saw you clip another bank. He followed you and noticed that you were not on your side of the road, even though there was oncoming traffic and that you were travelling too close to the vehicle in front. The traffic was fairly heavy. He described your driving as “appalling and dangerous”. He reported your driving and you were stopped by uniformed officers in St Martin’s. You failed the roadside breath test and at the station, the lower of the two readings was 135 micrograms. It was discovered that you only had a provisional licence and you were not displaying an ‘L Plate’ and your co-driver held no licence. You were reluctant to identify your co-driver. It was later discovered that you had no third-party insurance.

You exercised your right to silence when you were asked questions. You were bailed by this Court to attend your sentencing hearing on 27<sup>th</sup> October but you failed to appear so you were arrested and, from 30<sup>th</sup> October, remanded in custody until today which is six weeks. You did apologise and explained that you had overslept.

You are a Latvian National of 33 years of age and have been in Guernsey ‘on and off’ since 2016. Your ex-partner and child are in Holland. You said that you had planned to leave Guernsey to live in Holland this summer but have had to stay for these proceedings.

You have previous convictions in Guernsey. On 19<sup>th</sup> October 2016 for driving without a licence and on 24<sup>th</sup> June 2019, for driving with excess alcohol, not having a co-driver and not having an ‘L Plate’ and you were fined and disqualified from driving for 2 years, so you were able to get back on the road in June 2021. It is not known officially whether you have any convictions elsewhere. You say that you do not and we accept that.

### **Sentencing Considerations**

Your case has come up to the Royal Court because the Magistrate’s Court declined jurisdiction. The most serious offence that you have committed is the driving with excess alcohol and we will take that as the lead offence of the traffic offences, with the no third-party insurance and other traffic offences as aggravating factors. We deal with the failure to surrender to custody separately.

Guidelines were set in the case of The Law Officers of the Crown v Hatwell and Ogier, Guernsey judgment No. 22 of 2004, for the sentencing of drink drivers by the Magistrate’s Court. The maximum penalty in the Magistrate’s Court is much lower, but the factors to be taken into consideration are the same which include considering when the offender was able to get back onto the road and how soon after that he has offended. Those guidelines are that custody should be considered where the reading is over 70 micrograms and only in exceptional cases should a sentence be suspended. On a second conviction an immediate custodial sentence is almost inevitable. We take a starting point of 6 months for the driving with excess alcohol offence.

There are aggravating factors. Your standard of driving was dangerous – you clipped banks and you were not on your side of the road and you posed a danger to other road users. The reading in breath of 135 micro grammes is very high and you were just short of 4 times the legal limit. You were uninsured and had no ‘L Plate’ and no licensed supervisor. You have previous convictions in 2016 for the same offences of driving with excess alcohol, failing to display an ‘L Plate’ and not having a supervisor who was qualified. We take a combined starting point of 12 months for the traffic offences.

For the breach of bail we take a starting point of 3 months.

### **Mitigation**

#### **Plea**

We have to consider what discount to give you for your guilty pleas. You had no alternative other than to plead guilty so we give you a 25% discount.

#### **Personal Mitigation**

The Court has considered carefully the detailed and helpful social enquiry report prepared in respect of you. We have noted very carefully what you said on your own behalf. We note that you accept responsibility for your offending. We note your apology to this Court and to the community of Guernsey. You said that you were going through a difficult time when the offences were committed, but you did not make that an excuse and you apologised again.

We note what you told us about your daughter, that she is aged 12 and she has not seen you for some time. We note that you provide for her financially. We also note that you said that you would leave Guernsey after your sentence.

The Court does take into account the impact on children of sentencing parents in accordance with the case of Bourgaize v The Law Officers 2014, Judgment 49. We note that you have been living away from your daughter for some time, but there is an impact on her, particularly financially, if you are in prison so we have taken this into account when sentencing you.

## **Sentence**

The reading on this occasion and the fact that this is your second offence and your driving was described as “appalling and dangerous” means that an immediate custodial sentence is the only appropriate one. There has to be an element of deterrence.

Your record in Guernsey shows that you do not have respect for our Traffic Laws and do not understand why they are important. We have those Laws for the protection of the public from harm. In the case of the insurance offence, those Laws are intended to protect people from financial loss as well as harm. Your driving was dangerous and someone could have been seriously injured. You must go to Prison and be banned from driving for a long time.

We have taken into account the time that you have spent in custody and on remand by backdating the sentences to the 27<sup>th</sup> October 2023.

Taking into account everything that has been said and the totality principle, the sentences will be as follows:

- Count 1 – driving with excess alcohol – 7 months’ imprisonment from 27<sup>th</sup> October 2023; plus a disqualification from holding or obtaining a driving licence in all categories for 5 years from today.
- Count 2 – no ‘L Plate’ – no separate penalty.
- Count 3 – no co-driver – no separate penalty.
- Count 4 – 1 month’s imprisonment from 27<sup>th</sup> October 2023, concurrent with Count 1 plus a disqualification of 1 year from driving which is also concurrent with that in Count 1 from today.
- Count 5 - breach of bail – 2 months’ imprisonment consecutive.

The total sentence is one of **9 months’ custody** from 27<sup>th</sup> October and a **disqualification from holding or obtaining a licence** (in all categories) for **5 years from today**.

Mr Zvejnieks, although you are planning to leave Guernsey, I must warn you that driving whilst disqualified is a very serious matter.

**Catherine Maureen Fooks**  
**Judge of the Royal Court**

**8 December 2023**