Appeal against decision of the Magistrate's Court on Special Reasons in relation to ordering a Disqualification from Driving. Appeal dismissed.

[2025]GRC019

IN THE ROYAL COURT OF GUERNSEY

Between:

MARNI ALEXANDER **Appellant ("A")**

v

THE LAW OFFICERS OF THE CROWN **Respondents ("R")**

Appeal against decision of the Magistrate's Court On Special Reasons in relation to ordering a Disqualification from Driving

Appeal heard on: 7th March 2025

Decision handed down on: 27th March, 2025

Before: John Russell Finch, Esq, OBE, Lieutenant Bailiff

Counsel for the Appellant: Advocate M G A Dunster
Counsel for the Respondents: Advocate L Roffey

Materials referred to in judgment:

The Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936, as amended;
The Road Traffic Offenders Act, 1988, section 35

Bookless v Law Officers [2019] GRC 010;
Graham v Law Officers [2022] GRC 009;
Morton v Paint (1996) 21 GLJ 61 CA.

Blows v Chapman (1948) 112 JP 8;
Gordon v Smith [1971] Crim LR 173;
R v Crossen [1939] 1 NI 106;
R v Jackson [1969] 2 WLR 1339;
R v Steel [1968] Crim LR 450;
R v Wickens (1958) 42 Cr App R 236 CCA;
Renison v Knowler [1948] 1 KB 488;
Taylor v Austin [1969] 1 WLR 264;
Whittal v Kirby [1947] KB 194.

JUDGMENT

Introduction

1. This is an appeal, on a point of law, against the decision of the Magistrate's Court on 28th January, 2025, not to find "Special Reasons" to avoid the otherwise compulsory 12 month minimum disqualification under Guernsey law, for an offence of permitting the use of a motor vehicle without third-party insurance. The case raises a variety of issues, not only relating to the importance of the decision to the relevant individuals, but also on the legal position regarding special reasons. The case for A was elegantly and extensively argued by her very experienced Advocate. Full written submissions, plus copies of the authorities and other documents, were submitted in advance, both sides producing bundles, and the oral submissions were largely in accordance with the written submissions.

2. It is perhaps apposite at this early stage of the judgment, to make the obvious point that insurance offences can result in extensive and serious consequences for third parties. Counsel mentioned, in the course of argument, that the Motor Insurers' Bureau will only assist victims in Guernsey of uninsured driving accidents where the offending driver is unascertained. In addition, Guernsey legislation has retained the compulsory disqualification for insurance offences, whereas in England, that was changed in 1965, so disqualification there ceased to be mandatory and became discretionary. The governing Statute in Guernsey is the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936, as amended, (Tab 15 of A's bundle); which provides for a minimum 12 month disqualification for insurance offences "unless the court for special reasons thinks fit to order otherwise". The phrase "special reasons" is not defined in English or Guernsey legislation and recourse must be had to a large number of judicial decisions on the topic. When looking at English cases, it is necessary to bear in mind that special reasons there can also relate to non- endorsement of a driving licence for numerous road traffic offences; such endorsement does not apply in Guernsey.

What are "Special Reasons"?

3. The stem definition is found in the Northern Ireland case of R v Crossen [1939] 1 NI 106, approved by Lord Goddard CJ in Whittal v Kirby [1947] KB 194 and remains the basic explanation of the phrase. In R v Wickens (1958) 42 CR App R 236 CCA, four "minimum" criteria were laid down to amount to be a "Special Reason". Crossen is a good place to start; the relevant passage reads:

> *"A 'special reason' within the exception is one which is special to the facts of the case, that is special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason exception."* (underlining supplied for last sentence)

The "minimum criteria" in Wickens are that to amount to a "Special Reason", a matter must:

(1) be a mitigating or extenuating circumstance;
(2) not amount in law to a defence to the charge;
(3) be directly connected with the commission of the offence; and
(4) be one which the court ought properly to take into consideration imposing sentence.

There are a number of cases from the United Kingdom on the topic of special reasons, both generally and in relation to specific offences and facts. It is the practice of Guernsey Courts to regard these decisions as of the highest persuasive authority, and they are followed here. This practice is not just in the limited area under examination in the present case, but in all criminal matters. Here the meaning of "Special Reasons" has been dealt with in a plethora of UK cases, as they involve the application of the same words and same concepts.

4. In England, special reasons have to be distinguished from "mitigating circumstances" which enable a Court not to disqualify when sentencing, or disqualify for a shorter period than otherwise provided for in the legislation, when considering a penalty points disqualification ("totting-up"). In such cases, there is a very much wider discretion than when considering special reasons for not imposing an endorsement or compulsory disqualification. Mitigating circumstances must, in England, be found if the "totting-up" disqualification awarded is for less than 6 months. There are certain limitations to be found in the exercise of this power, notably "hardship, other than exceptional hardship" is excluded in the legislation (the Road Traffic Offenders Act, 1988 section 35). Guernsey does not, as previously mentioned, order the endorsement of driving-licences; so grounds for mitigation, where there is no compulsory disqualification involved, depend on the facts of the particular case, and the Guidelines set-down in the Magistrate's Court.

Background

5. As Advocate Roffey said in the Magistrate's Court, "the factual matrix" behind the offence "is a simple one". It is the surrounding circumstances that make the matter rather more complex. Both principals (A and one of her daughters) were legally represented at the hearing by Advocate C Green, who argued special reasons for both defendants, successfully for the daughter, who was driving, but unsuccessfully for A, who was charged with permitting the use of the vehicle, for which A holds insurance. The proceedings are set-out in full at Tab 2 of A's bundle. The matter started when the Police stopped A's daughter, who was driving the vehicle 29224 at 10.50 pm on 11.05.2024, as it did not display headlights. The customary Notice to produce documents was issued, but the problem was that the daughter was 24 and the policy only allowed other drivers aged 25 plus. At Tab 5 of R's bundle, the insurance certificates from 2020 onwards are copied. In bold (and large) letters, each document after 2020 allows the vehicle to be driven with A's permission by "ANY DRIVER AGED 25 YEARS AND ABOVE ….". To cut a long story short, A's daughter was able to escape disqualification. She had been told by A that she was covered, so she was misled into committing the offence of using the vehicle without third-party insurance. This accords fully with pre-1965 UK Case Law, see e.g. Blows v Chapman (1948) 112 JP 8. Nothing more need be said on that part of the case. As indicated, A was not able to avail herself of special reasons. The transcript shows a detailed examination of the facts being made before the Judge gave his decision (see especially, pages 50-51 of A's bundle). A accordingly received the minimum 12 month disqualification; the question of "exceptional hardship" not being applicable in the circumstances.

6. It is now necessary to go into these surrounding circumstances before considering the grounds of appeal put forward by Advocate Dunster. They can be summarized as follows. A was suffering from an unpleasant medical condition, which inter alia involved external bleeding. Accordingly, on a delayed return from holiday, transport was required. A put her daughter on notice to collect her and erroneously stated that the daughter was insured, on 10.05.2024. However, the actual request to pick A up was only made after A's flight had landed on 11.05.2024. A screenshot of the messages is at Tab 4 of A's bundle, where A asks for her daughter to "please hurry".

7. The main element of the facts, which was very forcefully put by Advocate Dunster at the appeal hearing, concerns A's other daughter. Documentation about her was before the Magistrate's Court. This daughter is now aged 21 and is unfortunately subject to a number of serious medical conditions. A's evidence at the trial (page 26, D-G) dealt with this. There were a number of medical and other reports available. The daughter in question, A stated, is not able to leave the house on her own, and is "utterly dependent" on A for attendance at the various appointments she has with physicians and others. "She's completely dependent" and has reduced mobility. It is not necessary to list the number of problems that this daughter unfortunately suffers from, but they are numerous and severe. This was before the Magistrate's Court, which was unable to accept that special reasons could be found. "Exceptional hardship" was not an applicable ground on which to find them. Judge Perry did mention, in giving his decision that on "a very small number of cases" in the past, he had "incorrectly" allowed arguments of exceptional hardship to stand. He continued (at page 51-A) that, "I am quite happy to say that was an error on my part … but I think it is one that has to cease". He added that, "it was simply, to put it simply, a frolic of my own that I can no longer sustain …". Thus, we have, putting it in theological terms, which may seem apt here, contrition, recanting and repentance.

Grounds of Appeal

8. These can be summarized as follows:

   1(a) the Judge erred in finding that A had reached an agreement to be picked up by her daughter on 10.05.2024; and
   (b) subsequently the Judge erred in law by failing to find A's non self-inflicted medical condition on 11.05.2024 did not amount to special reasons; and/or
   2 the Judge erred in his application of the law pertaining to special reasons, by not finding the exceptional hardship caused to A's other daughter amounted to a special reason.

9. Ground 1 can, with all due respect, be dealt with fairly economically. In relation to 1(a), A's evidence was that she put her daughter Alisha, on notice to collect her and wrongly stated she would be insured to drive the vehicle. The instruction to collect A only came after her late landing on 11.05.2024 (see the messages in A's bundle at Tab 4). It was submitted on behalf of R that the Judge found that permission had been given on both dates, but reached no firm conclusion as to when the instruction to use the vehicle had been given (page 43-G). However, "It was clear that she had already accepted she would be driving the Renault to the airport, potentially at least, from the text messages I have read". R further submitted that no firm conclusion was necessary, as A had unequivocally pleaded 'guilty' to the offence of permitting no insurance on 11.05.2024. Any challenge to the facts found faced the high hurdle that such findings cannot be impeached unless perverse (Graham v Law Officers [2022] GRC 009), and no reasonable tribunal could have made such findings. This is plainly not the situation here and this suggestion lacks any justification. The agreement date is not the point, the Judge's findings are easy to understand and perfectly adequate. Ground 1(b) refers to A's unpleasant medical condition. It was not pursued at the present hearing, that this had somehow overturned and overwhelmed A's powers of decision-making. It also has to be noted that there was no supportive medical evidence relating to that proposition at the original hearing or at the appeal. For the sake of completeness and for the avoidance of doubt, this point will be dealt with. Firstly, there are no authorities that support a contention that A's medical condition amounts to a special reason. A's submission was to the effect that the law "needs to move on". The position in relation to the insurance certificates for the vehicle is relevant here. The first policy (2020-21) had no age restriction; but the four policies issued since then plainly and clearly did

(see paragraph 5 above). A had failed to read the conditions. The observations of Lord Goddard CJ in Renison v Knowler [1948] 1 KB 488 at 494 are relevant here:

> "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."

R submitted that A's medical condition on 11.05.2024 is not the point, the "causative link" was her failure to read the policy's terms over a consecutive period of 4 years. If, as suggested, the law has to "move on", it must do so, it was suggested, in a way that is consistent with the existing authorities and not strike-out in a different direction.

10. Ground 2, in effect, is the nub of A's case and the large majority of time at the oral hearing was spent examining it. Advocate Roffey correctly characterized it as "a bold submission", which it is. A seeks the widening of the concept of special reasons to include exceptional hardship. This goes against the authorities and the practice of the courts in the UK and Guernsey since around 1936. Advocate Dunster resisted the idea that he was seeking to produce new law, but that the concept of exceptional hardship fits, or should fit, within the existing meaning of special reasons. Some passing reference was made to the celebrated civil case of Morton v Paint (1996) 21 GLJ 61 CA. But there, the situation was that the common law had to be developed in the area concerned where the previous position had been "rendered obsolete" by changes in society, so that the existing law was an "incumbrance". The Court of Appeal was clear that any development should be achieved "in an orderly fashion" and without usurping the functions of the legislature; a different situation from the present criminal case. As stated, Advocate Dunster, was not making this case a pillar of his argument, but the reference to it called for consideration. However, it is necessary to deal with the main thrust of A's argument. It was suggested that the English courts (from whom the large majority of decisions are taken) have "usurped" the functions of Parliament, by defining special reasons in such a restrictive manner.

11. On considering the authorities, we must go back to 1939 and R v Crossen (see paragraph 3 above). The last sentence there was underlined for the purposes of this decision. It is not hard to follow. It states that "a circumstance peculiar to the offender as distinguished from the offence is not a 'special reason'". This definition was applied in England. A selection of other cases shows that personal hardship cannot be a special reason, see e.g. R v Steel [1968] Crim LR 450; hardship related to the offender was not a special reason; Taylor v Austin [1969] 1 WLR 264; undue hardship was not a special reason; R v Jackson [1969] 2 WLR 1339; D was disabled and disqualification would cause him hardship. This failed as a special reason because that related to the offender and not the offence. So the fact that D was a doctor, or was a person employed for the benefit of the public, for which a licence was needed was not capable of amounting to a special reason, Gordon v Smith [1971] Crim LR 173. Finally, it is not a special reason if D, his family or employees, will suffer personal hardship as a result of disqualification; Whittal v Kirby [1947] KB 194. There is therefore a very consistent and long line of cases to the same effect. Personal hardship, and personal hardship to be caused to others, cannot amount to a special reason.

12. It was difficult to accept (if understood correctly), the submission made on A's behalf, mentioned in paragraph 10 above, that the English courts have somehow "usurped the function of Parliament" by restricting the definition of special reasons. There are numerous words and phrases used in statutes which courts have had to define, restrictively or otherwise, and a number of weighty legal publications dealing with such definitions. A moment's thought throws up many examples from criminal law, such as "dishonesty", "grievous", "recklessly", etc. In the field of road traffic law, there are other plentiful examples, including "driving", "in

charge", "mechanically propelled", "public place", "causing", "using", "permitting", and so on. In defining the phrase "special reasons", the courts were simply following the normal practice and performing one of their common functions. In relation to such definition, there are very numerous authorities, at least at Divisional Court level, frequently from the Court of Appeal, in Scotland, the High Court of Justiciary, and in Northern Ireland, the High Court. A court of summary jurisdiction in Guernsey, (or the Royal Court sitting in an appeal from that court), has no power to change around 90 years of legal decisions, often from the most eminent judges, to the contrary. Any change, if thought desirable, has to come from the legislature. In Bookless v Law Officers [2019] GRC 010, the Royal Court stated (also in an appeal on a sentence in an insurance case, on different facts):

> "In the present case, public policy considerations, ie, 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."

It is also worth repeating the information on the very limited rôle of the Motor Insurers Bureau in Guernsey, mentioned at paragraph 2 above. It will only come into the picture if the accident is occasioned by an unidentified driver. So, any accident that took place on 11.05.2024 could have had potentially serious implications.

Conclusions

13. Grounds 1(a) and (b) disclose very little of weight and are not substantiated by the record of proceedings, in the light of the Judge's findings on the facts. Ground 2 was the more significant part of the appeal and also lacks merit, flying as it does in the face of long-standing and well-established legal authority.

Decision

14. The Appeal is therefore Dismissed.

J R Finch OBE

Lieutenant Bailiff

27 March, 2025