

Appeal against part of the sentence imposed in the Magistrate's Court, challenging as manifestly excessive the 3½ year disqualification from driving imposed in respect of an offence of driving with excess alcohol, contrary to Section 2(2)(a) of the Road Traffic (Drink Drive)(Guernsey) Law, 1989 as amended. Appeal dismissed.

[2025]GRC055

**IN THE ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)**

**ON APPEAL FROM THE MAGISTRATE'S COURT
APPEAL AGAINST SENTENCE**

Date of hearing: 26 June 2025

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Stephen Murray Jones OBE, Steven John Morris,
David John Robilliard MBE, Marilyn Jasmine King, Tina Le Poidevin,
Jillian Clark and Sally-Ann David**

Between:

MARK QUERIPEL

-v-

THE LAW OFFICERS OF THE CROWN

Advocate J M McVeigh appeared for the Crown

Advocate S E Steel appeared for the Appellant

Cases, Materials referred to in the Judgment:

The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988
The Road Traffic (Drink Driving)(Guernsey) Law, 1989 as amended.

The Law Officers of the Crown v Roger Charles Hatwell and Michael Peter Ogier Jmt 22/2004

Introduction

1. This is an appeal by the Appellant, Mark Queripel, ("A") represented by Advocate Steel against part of the sentence imposed by the learned Judge of the Magistrate's Court on 14 March, 2025. Specifically, he is challenging as manifestly excessive the 3½ year disqualification from driving imposed in respect of an offence of driving with excess alcohol, contrary to Section 2(2)(a) of the Road Traffic (Drink Drive)(Guernsey) Law, 1989 as amended ("the 1989 Law"). The Law Officers are represented today by Advocate McVeigh.

2. Advocate McVeigh has helpfully provided a summary of the facts and counsel have answered our questions so I can further summarise those facts for the purposes of this judgment. The A was seen by a witness parked in a damaged car at the side of the road. The witness was concerned so approached and formed the view that A had been drinking. Not long afterwards the witness passed A's house and saw the extent of the damage. He noticed a number of damaged cars nearby and called JESCC. The Police attended and arrested A, who initially suggested that he had not been driving. He was breathalysed and produced a sample of breath containing 79 microgrammes of alcohol in 100ml of breath, the legal limit being 35. He was prosecuted. He accepted that he had been driving but sought to rely on alcohol consumed after driving to account for the reading. He engaged an expert to perform what is called a back calculation. The witness gave live evidence. The learned Judge of the Magistrate's Court rejected A's evidence, including that there was another vehicle involved in the accident and found A guilty. He sentenced him to a fine of £1,200, which is not challenged, and imposed the driving disqualification, the subject of this appeal.

Law Applicable to the Offence

3. Section 8(3) of the 1989 Law provides that:

“A person who is convicted of drink driving shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction from holding or obtaining a driving licence.”

4. There is, therefore, a mandatory disqualification of 12 months. The leading case in relation to sentencing for driving with excess alcohol is the Law Officers of the Crown v Roger Charles Hatwell and Michael Peter Ogier Jmt 22/2004. It is concerned mostly with appropriate terms of imprisonment but it is of note that, in the paragraph relating to those who are appearing before the court for a second time, the learned Judges say this *“it must be remembered that most second offenders will have been taken off the road for three years in respect of their first offence...”* and this gives an indication of the level of disqualification expected.
5. There is some guidance in the English Sentencing Guidelines, to which Advocate Steel has helpfully referred in respect of sentences in the Magistrate's Court in England, as to the appropriate guidelines to consider when considering the length of the disqualification. These are applied in practice in Guernsey and include the usual elements of deterrence, protection of the public and rehabilitation. It is said in the guidelines that there should be focus on the preventative element of disqualification, so the circumstances of the offence are important, specifically, how bad the driving was and whether the driver has a history of poor driving, the risk to the public from future harm. The impact on the defendant in terms of the defendant's prospects of rehabilitation and the impact on others of a disqualification must also be considered. A disqualification should be fair and proportionate. A disqualification is an ancillary order and such orders are not influenced by the fact of a Not Guilty plea.

Approach of the Court to appeals

6. There are no prescribed Grounds of Appeal in the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 (“the 1988 Law”). This Court approaches appeals against sentence as the Court of Appeal approaches such appeals from the Royal Court, namely that it will not interfere with a sentence unless it is wrong in law, wrong in principle or manifestly excessive. The last of these is in play in this appeal.

7. The task of the Royal Court is not to review the reasons of the sentencing Judge as the administrative court would review a public law decision. Its task is to determine whether the sentence imposed was manifestly excessive. In order to succeed on a submission of a sentence being manifestly excessive, A has to satisfy the Court that the sentence falls outside the appropriate range of sentences for the offence and the offender and not just because it might be more severe than this Court itself would have passed. Specifically, this Court will not tinker with a sentence.

Powers of the Royal Court

8. This Court has certain powers under Section 6 of the 1988 Law which include confirming the Order made or varying it and, as Advocate McVeigh has pointed out, there is also a power to increase sentence.

The Grounds of Appeal

9. In this case the single ground is that the disqualification was manifestly excessive “*given the breath reading and personal mitigation*”.

Approach of the Magistrate’s Court to sentence

10. The approach that was taken by the learned Judge of the Magistrate’s Court was as follows:
 - having found A guilty, he heard submission from A’s counsel, Advocate Steel, who also appears today;
 - reference was made to the Hatwell guideline above on account of the fact that this was A’s second conviction for driving with excess alcohol and the reading was over 70;
 - the learned Judge accepted Advocate Steel’s submission that the conviction was nearly three decades old and should not be taken into account;
 - the learned Judge noted correctly that A had a record so was not a person of previous good character; and
 - he specifically warned Advocate Steel that the penalties would be higher in view of the conviction after a Not Guilty plea and that is reflected in the fine.
11. Advocate Steel made submissions in relation to the impact of disqualification on A’s stonemason business and said that it would place the business in serious jeopardy and have a negative effect on staff, the impact of which had already been apparent during a period of pre-trial bail during which there was a condition of A not driving. There would be an impact on meeting professionals, such as surveyors on site and transport for staff who do not drive. Advocate Steel also referred to the impact on A’s family, specifically his wife who does not work, and he referred to the glowing references.
12. The learned Judge indicated that there was no credit for A in view of the Not Guilty plea and very little credit at all but he had taken into account the references, recognising that A is a “good standing” person, as is often the case with such offending, as was observed in Hatwell. He noted the poor standard of driving, that there was a serious incident and collision and that the impact was substantial.
13. We have today heard submissions from both counsel. The thrust of Advocate Steel’s submission is that the ban should have been 2½ years or possibly as high as 3 years. It is

accepted that the collision is an aggravating factor but points were made that no-one was harmed and the damage was covered by insurance. In Advocate Steel's submission the aggravating factor does not outweigh A's good character and the impact on the business to such an extent as to justify a 3½ year disqualification. Every month matters in terms of the running of the business albeit that the business has not folded following the conviction and disqualification and there is nothing to say that it will do. In Advocate Steel's submission, the disqualification was of a length which was not fair and proportionate.

14. Advocate McVeigh's submissions were very brief. She urged the Court to dismiss the appeal as frivolous, that there is, in the end, not sufficient impact on the business for that to be taken into account, no evidence of impact on third parties and no reason to adjust the disqualification.

Discussion

15. In our judgment, the learned Judge approached the sentencing exercise correctly and fairly. A was not entitled to any discount for a guilty plea. The learned Judge correctly discounted the old previous conviction. He took into account the references. He was right to take into account the particularly poor driving and its consequences. There was no detailed evidence before him as to impact on the business and no information as to the family's finances. It is to A's credit that he has made the business work since the disqualification. Disqualification was mandatory. There were no special reasons. It was inevitable that there would be a disqualification so this was not a situation where an alternative could be imposed to avoid those impacts. Disqualification was the necessary consequence of A's decision to drive. This was a bad case of driving with excess alcohol in terms of the standard of driving, the risk and circumstances of the offending. A disqualification of 3½ years cannot be described as manifestly excessive.

Decision

16. The approach of the learned Judge cannot be faulted. Accordingly, the appeal is dismissed.

Catherine Maureen Fooks
Judge of the Royal Court