

Appeal on sentence – manifestly excessive – driving disqualification – old previous conviction – error of law.

[2025]GRC083

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

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

26 September 2025

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Stuart Michael Crisp, Marilyn Jasmine King, Felicity Jane Quevâtre,
Richard Jeremy Wallen James, Ian Michael Brown,
Kay Alison Parnwell, Sally-Ann May David and
Susan Elizabeth Gallienne**

Between:

CHRISTIAN DOYLE

-v-

THE LAW OFFICERS OF THE CROWN

Crown Advocate C Dunford appeared for the Crown

Advocate S E Steel appeared for the Appellant

Cases and Materials referred to in the Judgment:

The Magistrate’s Court (Criminal Appeals) (Guernsey) Law, 1988
The Road Traffic (Drink Driving) (Guernsey) Law, 1989
The Magistrate’s Court (Criminal Appeals) (Guernsey) Law, 1998
The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002

The Rehabilitation of Offenders Act, 1974
The Road Traffic Act, 1988
English Sentencing Guideline Driving Disqualification

The Law Officers of the Crown v Roger Charles Hatwell & Michael Peter Ogier Guernsey Judgment
22/2004

JUDGE OF THE ROYAL COURT:

Introduction

1. This is an appeal under The Magistrate’s Court (Criminal Appeals) (Guernsey) Law, 1998 (“the 1988 Law”) by Christian Doyle, the Appellant (“A”), against that part of the sentence he received on 11 November 2024 from the Magistrate’s Court for driving with excess alcohol contrary to section 2 of The Road Traffic (Drink Driving) (Guernsey) Law 1989 (“ the Drink Driving Law”).
2. The A received a fine of £1,000 which is not the subject of the Appeal. It is the disqualification of 4 years which is challenged. Section 8 of the Drink Driving Law makes a disqualification of 12 months mandatory, unless there are special reasons, whilst empowering the Court to impose a longer period of disqualification.

Powers of the Royal Court

3. Under section 6 of the 1988 Law, the Royal Court has the power on appeal to confirm reverse or vary the decision appealed against, remit the matter to the Magistrate’s Court or make such other Order in the matter as may be just and, by such Order, exercise any power which the Magistrate’s Court might have exercised which is construed as including the power to award any punishment whether more or less severe than that awarded by the Magistrate’s Court whose decision is appealed against.

Approach of the Court to Appeals

4. There are no prescribed Grounds of Appeal in the 1988 Law. This Court approaches Appeals Against Sentence as the Court of Appeal approaches appeals from the Royal Court, namely that it will not interfere with the sentence unless it is wrong in Law, wrong in principle or manifestly excessive. It is the last of these which is engaged in this Appeal.
5. The task of the royal Court is not to review the reasons of the sentencing Judge as the administrative Court would a public law decision. Its task is to determine whether the sentence imposed was wrong in Law, wrong in principle or manifestly excessive.
6. In order to succeed on the submission of a sentencing being manifestly excessive, the 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 the sentence which this Court itself would have passed. Specifically, this Court will not tinker with the sentence.
7. In this matter there were four grounds for Appeal on the Notice of Appeal as follows:
 - 1) the sentence was manifestly excessive;
 - 2) the Judge sentenced on the basis that disqualification would only be effective in Guernsey, whereas it would also affect driving in England (see section 102A(2)(b) of the Road Traffic Act 1988);
 - 3) the Judge took into account the previous drink drive conviction from around 1993, which should have been disregarded due to the time that had elapsed; and
 - 4) a ground concerning the conduct of the previous advocate which is quite properly not pursued as that is not a ground of Appeal.

In essence, grounds 2 and 3 are the basis upon which the sentence is said to be manifestly excessive.

The Facts of the Case/Approach of the Magistrate’s Court to Sentence

8. The facts can be concisely stated. At 02:25am on 2 November 2024, officers were dealing with an unrelated matter on Les Gravees when they saw the Defendant riding his black Peugeot

motorcycle up the Grange. They saw him swerve across the road into his own drive, which made them suspicious that he had been drink driving. On approach by the Police, he was found to be unsteady on his feet and slurring his speech. He failed the roadside breath test and was taken into custody and the lower reading in breath was 99/100.

9. The A has a previous drink-drive conviction from 1985 when he was 19 years old, but for reasons which are not understood, this did not appear on his Police record, it having been disclosed by the A to his Advocate and his Advocate disclosed it to the Court. Whatever the circumstances of that disclosure, the fact of the previous conviction was before the Court and it was entirely proper that the learned Judge of the Magistrate's Court should consider its relevance.
10. The legal limit for alcohol in breath is 35 microgrammes in 100 millilitres of breath and it is common ground that a reading of 99 is high. For offences of drink-driving there are sentencing guidelines set out by this Court (when dealing with Appeals from the Magistrate's Court) in the case of the Law Officers of the Crown v Roger Charles Hatwell and Michael Peter Ogier Guernsey Judgment 2022/204, commonly referred to as the Hatwell Guidelines.
11. The then current practice of the Magistrate's Court to consider a custodial disposal in the event of the first offender where the reading is over 110 microgrammes (incorrectly said to be three times the legal limit which would be 105 microgrammes) was endorsed. In the case of persons, "*who have not previously offended or whose offending is so long ago that it should be regarded as spent*". Sir de Vic Carey, the then Bailiff of Guernsey, went on to say this at paragraph 3 of the Court's judgment:

"In the case of second and subsequent convictions for drink-driving with excess alcohol, custody should be considered in all cases where the reading is over 70 microgrammes. Relevant considerations on second offences will be the length of time that has elapsed since the original conviction or convictions. It must be remembered that most second offenders will have been taken off the road for 3 years in respect of their first offence and therefore regard should be had to the time that has elapsed between them coming back on the road and reoffending. In the individual cases there are references to the disqualification period of 3 years."

12. The following principles are relevant, therefore, to this Appeal:
 - 1) in the case of a subsequent conviction with a reading over 70, the Magistrate's Court will be considering whether there should be a custodial sentence; and
 - 2) the usual disqualification for a first offender is 3 years off the road.
13. At the hearing in front of the learned Magistrate, there was discussion as to whether the A could be sentenced that day or whether it would be necessary to adjourn for a Social Enquiry Report which would be usual where the custodial sentence is being considered. The learned Judge indicated that there was no need for a Report and the matter proceeded.
14. The mitigation offered is fully set out in the transcript. It was submitted that the distance driven to was relatively short namely of 1,500 yards, that the driving was not poor and reference was made to the references which we have in the bundle and which attest to the good character of the A and the following was said: "*He is a solicitor, he is working in Guernsey for a company that is based in Guernsey, he has family and travels regularly to the UK.*"
15. The learned Judge gave the A credit for his guilty plea and took account of the mitigation raised and the references and went on to say this: "*The problem is, this isn't your first lapse of judgement in respect of driving a motor vehicle, even if the previous one was some considerable*

time ago, you know the consequences, your position lets you know the consequences of driving with this level of alcohol, almost three times the legal limit, you were clearly a real danger to other road users, whether you thought you were or you didn't."

16. He then went on to issue the fine of £1,000 or 50 days and said that, due to the high level of reading; *"You will be disqualified from holding or obtaining a licence for the period of 4 years starting from today."* The learned Judge explained that the A could not drive any motor vehicle on the roads of Guernsey for the next 4 years and explained in detail what that meant. He went on to say this: *"I am told that you return to England on a regular basis, the disqualification only applies in Guernsey, but I must warn you that if you don't declare the disqualification to your UK insurance company, you may find your insurance is invalid if you have an accident."*

A's Submissions on Appeal

17. Advocate Steel did not file any written submissions which had no bearing on the decision but, it is to be noted in future that written submissions should be filed in all appeals. The Court granted a request for a later start and as a consequence of that, Crown Advocate Dunford did file Written Submissions which saved time at the hearing. The filing of Submissions in advance gives the Judge and Jurats a greater opportunity to consider the grounds and responses in advance of the hearing.
18. It was the thrust of Advocate Steel's Submission that the 4 year disqualification was manifestly excessive and fell outside the appropriate range of disqualification for this offence and this offender. He submitted that 3 years would have been appropriate and that this would not constitute tinkering. He made reference to the Hatwell Guidelines. He repeated the mitigation which had been advanced on behalf of the A and added some points as follows:
- 1) that there was no damage or injury; and
 - 2) that the A travels to the UK to see his family, namely his partner and three children (17, 16 and 12 years' old) most weekends.

Advocate Steel had to accept that this was new material when there was no leave for it to be introduced. It is a matter of principle that this Court, when dealing with Appeals, considers only the material which was before the learned Judge of the Magistrate's Court and that new material has to be the subject of an application for leave to adduce. The learned Judge of the Magistrate's Court was given very limited information, but it was clear that this A had family in the UK and travelled regularly to the UK.

19. Advocate Steel's further Submissions fell into four categories as follows.

1) Relevance of the previous conviction.

20. Advocate Steel submitted that the learned Judge's reference to the previous conviction in his sentencing remarks can lead only to the conclusion that he took it into account in sentencing, even though he did not, quite properly, consider that it would trigger consideration of an immediate custodial sentence, bearing in mind that it was a second offence and a reading over 70. In Advocate Steel's Submission, bearing in mind the lack of detail of the offence, or the penalty (the A claims to be unable to recall what the penalty was), the A should have been given the benefit of the doubt as to the seriousness of it. His primary submission is that, bearing in mind the age of the conviction (some 40 years ago when the A was 19 years' old), it should have been disregarded in its entirety.
21. There was some discussion as to what Sir de Vic Carey meant when he talked of a conviction being disregarded because it was "spent". This cannot have been a reference to our

Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 because that did not come into force until after the publication of the Hatwell Guidelines. The Hatwell case is however long after the enactment of The Rehabilitation of Offenders Act, 1974 in England so the expression ‘spent conviction’ could be read in that context. Nonetheless, the learned Judge of the Royal Court agreed with the submissions of both Advocate Steel and Crown Advocate Dunford, that it is better read simply as “disregarded”, in the way that the Royal Court, when sentencing, will sometimes treat a person with previous convictions as a person who has no such convictions if those convictions are old or of such a minor nature compared with the matter in respect of which it is sentencing a defendant.

2) Reference to the A’s profession

22. Advocate Steel submitted that it was unfair that there was reference to the A’s position, which can only be a reference to his job as a solicitor, bearing in mind that he is not a criminal lawyer, is only qualified in England and practises as a Corporate Lawyer. Advocate Steel went on to submit that there is no need for a person to be a lawyer in order to know that drink-driving is an offence, bearing in mind that this is advertised on the back of buses in Guernsey and regularly in press reports. He submitted that A should not be punished for being a lawyer. If anything, he should have been given credit for his excellent work ethic.

3) The level of the reading

23. In Advocate Steel’s submission, the reading was not a very high reading which crossed into the custody threshold set at 110. The reading was reflected in the higher financial penalty. Advocate Steel then went on to list an absence of aggravating factors and the presence of mitigating factors, that the offending was not committed whilst on bail or licence, the road conditions were not poor, that it was only a moped, there were no passengers, there was not a high level of traffic or pedestrians, A did not have recent convictions and that he was effectively of good character, the distance travelled was short, although not so short as to qualify for special reasons and that there was a constant theme of remorse.

24. Advocate Steel then made reference to the English Sentencing Guideline Driving Disqualification as follows:

- 1) How bad was the driving? Advocate Steel said that it was a suspicious manoeuvre but there was no collision.
- 2) Is there a history of bad driving etc? There is just the one old conviction.
- 3) Is the public at risk of harm in the future beyond that which is always present from driving? Advocate Steel said that this risk did not justify a 4 year disqualification.
- 4) Is the disqualification a sufficient deterrent? Advocate Steel submitted that 3 years was sufficient.
- 5) What were the prospects of rehabilitation and the Impact on third parties? The submission of Advocate Steel was that the Court was aware that the A was undertaking regular trips to England. Whilst this was not going to prevent the enjoyment of his family’s Article 8 rights, it was inconvenient and he later made reference to the fact that, when travelling to England one is likely to travel longer distances by car and that the effect of the ban, for example, would prevent the A from being able to hire a car at an airport or drive his car off the ferry (it having been placed on the ferry by someone able to drive it in Guernsey).
- 6) Is the disqualification fair and proportionate, bearing in mind the culpability and harm? In Advocate Steel’s Submission, there was no reason to depart from 3 years.

4) The legal error made by the learned Magistrate

25. It is common ground that, under section 102(A)(2)(b) of The Road Traffic Act, a disqualification imposed by the Guernsey Court is recognised in England and that it is not permissible for a person, even with an English driving licence, to drive in England when subject to such a disqualification. As was made clear in the course of the hearing, it has been widely misunderstood by many in Guernsey, including Advocates and Judges, that this was not the case and it was widely thought that a disqualification applied in Guernsey only.
26. It is incontrovertible that the learned Judge of the Magistrate's Court made an error in indicating that it might be possible for the A to drive in England, subject to declaring the disqualification to his insurers. Advocate Steel's submission was that the learned Magistrate had gone beyond his usual commentary in relation to the effect of disqualification because there had been reference to the A driving in England. In so far as the learned Magistrate considered that the A might be able to drive in England, when in fact he could not, Advocate Steel argued that the impact of the disqualification was more severe than envisaged. In Advocate Steel's submission, this is an unusual point and warrants the Court revisiting the length of the disqualification. It is too severe and unjustified.

Respondent's Submissions on Appeal

27. Crown Advocate Dunford helpfully supplied the Court with the Hatwell case and made short written submissions, supplemented by even shorter oral submissions. In his written submissions he set out the relevant paragraph of Hatwell. He acknowledged that the learned Judge had made an error and that it was a matter for the Royal Court to decide whether the fact that the disqualification applied in England would (or should) have led to a reduced period of disqualification, bearing in mind the A's circumstances. He reminded the Court that the test is "manifestly excessive" (his emphasis). In relation to the previous conviction, he questioned whether the learned Judge had in fact taken the previous conviction into account as an aggravating factor, rather than noting it as relevant as to whether or not to order a report. The learned Judge correctly decided that it did not trigger the consideration of a custodial sentence. Crown Advocate Dunford drew attention to the high reading which was the subject of comment by the learned Judge in sentence.

Discussion

28. The Court reminded itself of the test for Appeal as set out above. In determining whether or not a sentence is manifestly excessive, the Court looks at the factors which were taken into account by the learned Magistrate and those which were not. Taking into account factors which should not be so taken, or not taking into account factors which should be taken, can point to a sentence being manifestly excessive.
29. Taking the points made by Advocate Steel in turn, the Court came to the conclusion that the 40 year old conviction should have been disregarded in its entirety. It was so old and the A so young at the time, that it was irrelevant and this conclusion is strengthened by the fact that its existence was brought to the Court's attention effectively by the A himself. This Court has always had in mind that the learned Judges of the Magistrate's Court are dealing with a high volume of cases and they are not crafting the sentencing remarks in the detail that this Court does when sentencing. It can be difficult, therefore, sometimes to discern whether factors have been taken into account as aggravating or mitigating factors, or are just the subject of comment. Nonetheless, on this occasion, this Court has concluded that the reference to the previous conviction in the sentencing remarks, it having been discounted for the purposes of ordering the Court or triggering the consideration of a custodial sentence, does point to it having been taken into account when it should not have been.

30. The same can be said of the comment about the A's "position". It is not unreasonable to make the comment that a lawyer should know the law and it may be that it was no more than a comment, but its inclusion in the sentencing remarks without qualification, does lead to the justified question that it has been taken into account as an aggravating factor when it should not have been.
31. The reading of 99 is high and is not far off the trigger point for a custodial sentence and therefore the learned Judge was perfectly entitled to draw attention to it and to deem it to be an aggravating factor which led to the increased fine and which could properly have led to an increased disqualification.
32. In terms of the factors set out by Advocate Steel, from the English Sentencing Guideline, these are helpful factors albeit they are guidance only and not binding on this Court or the Magistrate's Court. In this case, it is a mitigating factor that there was no collision, albeit it that this Court agrees that the driving was sufficiently poor that it drew the attention of the Police. Advocate Steel's remaining list of points which amount to an absence of aggravating factors does not assist A. An absence of aggravating factors is not of itself mitigation.
33. The legal error is an unusual point. It is an error of law, albeit effectively foreign law. The learned Magistrate was aware that the A travels regularly to the UK and has family there. The fact that the disqualification would apply in England and directly affect this A was a matter which should properly have been taken into account by the learned Magistrate when considering the appropriateness of the length of disqualification.
34. The proper approach for sentencing this A was to disregard the previous conviction in its entirety and therefore treat him as a first time offender. The driving was not such as to be an aggravating factor. The high reading was an aggravating factor. The A was entitled to a full discount for his guilty plea and additional discount for his (effective) previous good character, his standing in the community and his remorse. The fine properly reflected the aggravating factors. In terms of the disqualification, the driving was not so bad, there was no history of bad driving, no particular risk to the public to be addressed, a longer ban was not required as a deterrent and there was impact on A and his family. The driving disqualification would take effect in both jurisdictions which was a relevant consideration.
35. After careful consideration, this Court has concluded that the disqualification of 4 years was manifestly excessive in the circumstances of this particular case and that the Appeal should be allowed to the extent that the disqualification should be reduced to 3 years.

Conclusion

36. Accordingly, the Appeal is allowed in respect of the 1 year reduction to the disqualification.

Catherine Fooks
Judge of the Royal Court
6th November 2025