

3rd August, 1987

Before the Deputy Bailiff, assisted by Jurats Le Boutillier and Bonn.

POLICE COURT APPEAL: GEOFFREY LOUIS TAIT

DEPUTY BAILIFF: This is another difficult case. As the Court said in the previous case, this Court has said that even in the case of a first offence, where the alcohol concentration is high, there should be a custodial sentence unless there are exceptional circumstances. Exceptional circumstances must relate to the offence and not to the offender. We see that the Police Court has interpreted the policy on the basis that anyone who appears before the Court on a first offence with a blood level count in excess of two hundred, will get a short prison sentence unless there are very exceptional circumstances. Despite what Mr. Habin has said, we approve the demarcation line and the policy agreements between the Magistrates to ensure uniformity. We doubt whether the word "very" adds anything to "exceptional circumstances". However, this Court has also said that generally, a first offender should not be deprived of his liberty without the Courts having the benefit of a background report. Moreover, the Court has a duty to consider whether a probation order conditional upon the performance of Community Service cannot replace^a custodial sentence. We sympathise with the Relief Magistrate because these are two directly conflicting principles, but as the Court said earlier in the case of Scott this morning and the two cases of O'Farrell and Le Page do show that the Police Court does depart from the agreed policy where there are particular mitigating factors. In O'Farrell, the defendant was a first offender with good character references and the Court said it would not help anyone to send him to prison. Now, it is essential that there should be a consistency of approach. In the instant case the appellant is a man of thirty-one years with only one minor previous conviction for careless driving, all of five years ago, when he was fined twenty pounds and his licence to drive was not even endorsed. We regard him therefore as a person of good character. He holds a good position, he has good references and he was co-operative and in the circumstances we are of the opinion that the Relief Magistrate should have ordered a Probation report for his consideration. Therefore we quash the sentence of imprisonment without prejudice to the right

of the Police Court to re-impose it and we remit the case to the Police Court with the direction to obtain a Probation report before passing sentence. In the meantime, we renew the appellant's bail, the disqualification will remain in force and the appellant will have the costs of his appeal.

Author^{it}ies referred to in the judgment:

Police Court Appeal: Peter Samuel Scott - 3rd August, 1987

Police -v- Kevin Francis O'Farrell - Police Court 1st June, 1987

Police -v- Peter Leonard Le Page - Police Court 22nd July, 1987

Other authorities referred to:

Sentence of the Court - H.M.S.O. (3rd edition) 1978

Suggestions for Traffic Offence Penalties - How to use the "suggestions" - The Magistrates' Association - 9th edition May 1985

Department of the Environment - Report of the Departmental Committee: February, 1976 - "6 Sentencing the offender", and "7 High-risk offenders"
D.A. Thomas (2nd edition) Principles of Sentencing - 1979. p. 191 - Blood alcohol offences

Thomas (1973) 57 Cr.App.R. 496 - The case of Colin Thomas

H.J. Wallis and A.R. Brownlie (2nd edition) - "Drink, Drugs and Driving" - November 1984 - Chapter 15 "Penalties" (p. 226 to 231)

1976 Crim.L.R. p. 264. "Sentence -driving with excess blood alcohol - when imprisonment appropriate".