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ROYAL COURT
(Samedi Division)

18th August, 1997. 163

Before: Sir Philip Bailhache, Bailiff, and Jurats Le Ruez and Potter.

Magistrate's Court Appeal (Relief Magistrate: R.G. Day, Esq).

Renato Antonio Carpinteiro

- v -

The Attorney General

Appeal against a total sentence of 3 months' imprisonment imposed in the Magistrate's Court on 12th June, 1997, following guilty pleas to:

First Charge Sheet (dated 27th January, 1997).

1 count of assault (count 1, on which count a sentence of 2 weeks' imprisonment was imposed).

1 count of malicious damage (count 2, on which count a sentence of 2 weeks' imprisonment, concurrent, was imposed).

[The appellant was convicted on 17th March, 1997, on a not guilty plea to a third count of driving a motor vehicle on the road after consuming alcohol in excess of the prescribed limit, contrary to Article 16A(1)(a) of the Road Traffic (Jersey) Law 1956. The appellant appealed against conviction, and the appeal was allowed by the Royal Court on 19th May, 1997].

Second Charge Sheet (dated 2nd June, 1997).

1 count of driving whilst disqualified, contrary to Article 9(4) of the Road Traffic (Jersey) Law 1956 (count 1, on which count a sentence of 3 months' imprisonment, concurrent, was imposed); and

1 count of using a motor vehicle on the road without Third Party Insurance, contrary to Article 2 of the Motor Traffic (Third Party Insurance) (Jersey) Law 1948 (count 2, on which count a sentence of 3 months' imprisonment, concurrent, was imposed).

Appeal dismissed.

Advocate R.J.F. Pirie for the appellant.
Mrs. S. Sharpe, Crown Advocate.

JUDGMENT

THE BAILIFF: This appellant appeals against the sentences imposed by the Relief Magistrate on 12th June, 1997, totalling three months' imprisonment for offences of common assault, malicious damage, driving whilst disqualified from holding a licence, and driving a motor vehicle without Third Party Insurance. For the offence of assault and the offence of malicious damage, the appellant was sentenced to two weeks' imprisonment, concurrent. For each of the driving offences, the appellant was sentenced to three months' imprisonment, again concurrent with each other and concurrent with the other sentences.

Mr. Pirie, who appeared for the appellant, and who said everything which could conceivably be said on his behalf, relied principally upon his submission that the Relief Magistrate had not had an open mind in so far as an important submission on the appellant's state of mind relating to the driving offences was concerned. There appears at p.85 of the transcript of proceedings in the Police Court the following passage:

> *ADVOCATE PIRIE: "Sir, these occurred, as you are aware, on 1st June, 1997, when Mr. Carpinteiro was riding a moped under 50cc. As the Centenier has recorded in his report, Sir, Mr. Carpinteiro has stated and his instructions to me are that he believed that he did not need a licence to ride a machine under 50cc. Now, the terms of Article 8 of disqualification are that he is disqualified from holding or obtaining a licence. The Article doesn't say 'you are disqualified from driving'. It is generally accepted that that is what it means."*
>
> *JUDGE DAY: "Well, unless you are going to plead insanity, I don't accept that argument."*
>
> *ADVOCATE PIRIE: "Well, that is, those are my instructions, Sir."*
>
> *JUDGE DAY: "I see."*

What counsel was saying, on behalf of his client, was that the appellant believed, at the time he rode the motor-cycle in question, that he did not require to hold a driving licence because it was less than 50cc. He believed, therefore, it was asserted, that the disqualification imposed by the Police Court did not prevent him from riding this moped. It is clear that the Relief Magistrate rejected this submission. The Relief Magistrate had listened to the witnesses and had heard lengthy argument in relation to both of these alleged driving offences and the offences of assault and malicious damage.

It also needs to be borne in mind that the appellant had been convicted of driving whilst disqualified on two previous occasions, in 1993 and 1995, and in respect of one of those convictions, had been sentenced to a prison term. Furthermore, the appellant had been convicted of driving whilst disqualified only a few months before the occasion in question here. His appeal against that conviction had been allowed by this Court on 19th May, 1997, that is only some two weeks before the commission of this offence.

Finally, it is the case that the appellant has lived in the Island for thirteen years. We think that the Magistrate was perfectly entitled to reject the claim that the appellant thought he was entitled to ride a moped of less than 50cc without a valid driving licence and to proceed to sentence him on that basis.

The appellant has a very bad criminal record. He has appeared before the Courts on some twenty occasions, charged with some forty different charges, the vast majority of which relate to motoring offences.

We cannot find that the sentences imposed by the Relief Magistrate in relation to the motoring offences were wrong in principle. So far as the sentences for the offences of assault and malicious damage are concerned, we, again, did not hear the evidence and we have had no opportunity to form a judgment upon the character of the witnesses arising from that evidence. It is not for this Court to usurp the discretion of the Magistrate unless it is clear that some error of law has taken place, or the Magistrate has otherwise acted unreasonably. Taken in the round, we are unable to reach the conclusion that the sentences of two weeks' imprisonment were either wrong in principle, or, indeed, manifestly excessive. The Relief Magistrate clearly gave careful attention to the matters set out in the detailed background report, prepared by the Probation Service, and imposed sentences which seemed to him right and proper. We cannot find that his decision was wrong and the appeal is accordingly dismissed. Mr. Pirie, you shall have your legal aid costs.

Authorities

Wilkinsons Road Traffic Offences (17th Ed'n): Vol 1: paras. 10.76; 11.75.

Mière -v- A.G. (5th February, 1990) Jersey Unreported.

A.G. -v- Beedles (19th October, 1990) Jersey Unreported.

A.G. -v- Whiteford (14th January, 1991) Jersey Unreported.

A.G. -v- Lee (26th April, 1991) Jersey Unreported.

A.G. -v- McMahon (28th August, 1992) Jersey Unreported.