



**SHERIFF APPEAL COURT**

**[2016] SAC (Crim) 24  
SAC/2016/000341/AP**

Sheriff Principal M M Stephen QC  
Sheriff P J Braid

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL M M STEPHEN QC

in

NOTE OF APPEAL

by

WILLIAM SCOTT STEVENSON

Appellant;

against

PROCURATOR FISCAL, CAMPBELTOWN

Respondent:

**Act: Macintosh, Advocate  
Alt: Carmichael, Advocate Depute; Crown Agent**

27 July 2016

[1] The appellant was found guilty at the trial diet on 26 April 2016 at Oban Sheriff Court to a contravention of section 5(1)(a) of the Road Traffic Act 1988, with a reading of 153 microgrammes of alcohol in 100 millilitres of breath. On the same date he was disqualified from holding or obtaining a driving licence for a period of six years and fined £1,000. Today's appeal is taken against both the fine and the period of disqualification.

[2] The appellant also pled guilty to two other charges relating to events on the same date, 29 January 2016, namely, a contravention of section 172(2)(b) and (3) of the Road Traffic Act 1988 by failing to provide information as to the identity of the driver of the vehicle ML15 WEF when required to do so by a police constable; and a contravention of section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010 by behaving in a threatening or abusive manner at his home in the presence of police officers by shouting and swearing. The appellant was fined £250 on each of these charges. Sentence is not appealed in respect of Charges 2 and 3.

[3] The circumstances of the drink driving offence are narrated in the sheriff's report. It appears that the appellant had been drinking throughout the day and had not attended work. At approximately 4 o'clock in the afternoon he drove from his home to the centre of Tarbert to purchase alcohol. He was refused alcohol in view of his obvious intoxicated state. When he left the shop he went straight to his vehicle whereupon the shop assistant phoned the police who attended at his home around 5pm. Charges 2 and 3 arise from the police attending at his house.

[4] In his submissions today counsel for the appellant argued that the period of disqualification was manifestly excessive. The appellant was a first offender in terms of road traffic offending. His two previous convictions were minor and a long time ago. The sheriff had discounted them. In a rural area the length of the disqualification would cause severe inconvenience and would prejudice his employment. We were referred to *PF Cupar v Troup 2003 SCCR 753* where the circumstances were arguably more serious and a 3 year disqualification was imposed. It was argued that the fine was also excessive. However, it was conceded that the fine had been imposed when the appellant was in employment

whereas he is now unfit for work and his earnings are reduced to approximately £800 per month.

[5] The breathalyser test resulted in an extremely high reading of 153 microgrammes of alcohol. The sheriff properly considered that a substantial period of disqualification was required not only to mark the high level of culpability and alcohol in his breath but also for the purpose of public protection given that the appellant in a severely intoxicated state chose to drive in the centre of a small town just after the school day had ended. To that extent, we take no issue with the sheriff's approach. However, the sheriff, in selecting a period of six years, also stated that she considered that the appellant required to address the serious problems she perceived he had with alcohol and that then it would be open to him to return to court and seek removal of the disqualification.

[6] The appellant is a 56 year old man with no previous road traffic convictions. He has two minor previous convictions from some time ago which the sheriff specifically excluded from consideration when sentencing. The appellant had been driving throughout his adult life without apparent incident. We consider that there is force in the argument that the period of disqualification is excessive. The sheriff was correct to consider a lengthy period of disqualification to reflect the factors referred to in paragraph 5 above. However, it appears that the sheriff may have selected six years in order to encourage the appellant to address the serious problems she believed he had with alcohol. We consider that approach to be flawed in two respects. First, other than the consumption of alcohol on the day in question there is no further information to suggest that the appellant has an alcohol abuse problem. Second, it is wrong, in imposing a period of disqualification, to advert to the statutory provision which enables a disqualified driver to apply for removal of the disqualification: *R v Lobley* [1974] RTR 550. The correct approach is to impose the period of

disqualification appropriate for the offence, rather than to impose an extended period of disqualification on the basis that an offender may subsequently apply to the court to have it reduced. Looked at objectively, the circumstances of the present case and the matters with which the sheriff was correct to be concerned lead us to the conclusion that these areas of concern including public protection can properly be met by the imposition of a shorter period of disqualification. We therefore quash the period of disqualification imposed by the sheriff and will re-impose a period of three years.

[7] The appellant also appeals the level of the fine. He is currently off work due to anxiety and is in receipt of sick pay of approximately £800 per month. He still requires to maintain mortgage payments. His employability is affected by the disqualification. However, we do not propose to interfere with the sheriff's assessment of the appropriate financial penalty. This was a serious offence which called for a high fine.