



SHERIFF APPEAL COURT

**[2016] SAC (Crim) 28
SAC/2016/000321/AP**

Sheriff Principal M W Lewis
Sheriff Sean Murphy, QC

STATEMENT OF REASONS

delivered by SHERIFF SEAN MURPHY, QC

in

SUMMARY APPEAL AGAINST SENTENCE

by

STEPHEN GILCHRIST

Appellant:

against

THE PROCURATOR FISCAL, DUMBARTON

Respondent:

**Appellant: Findlater; John Pryde & Co
Respondent: McFarlane AD; Crown Agent**

10 August 2016

[1] This is an appeal against sentence by Stephen Gilchrist who pled guilty before the sheriff at Dumbarton to two charges, the first being an offence under section 103(1)(b) of the Road Traffic Act 1988, a charge of driving whilst disqualified, and secondly a charge under section 143(1) and (2) of the same Act, a charge of driving without insurance.

[2] Before us today Mr Findlater has pointed out that having been stopped by the police, the appellant immediately admitted his responsibility for each of these offences and he pled

guilty before the sheriff at the first opportunity to do so. No challenge is taken to the disqualification from driving imposed by the sheriff for a period of 10 years, however issue is taken with the sheriff's decision to impose a custodial sentence in relation to the first charge of some 11 months discounted from 12 months. Mr Findlater has not challenged the headline period but has identified the discount applied by the sheriff which equiperates to one of 8.33%. He submitted that the sheriff mistakenly considered the case of *Coyle* 2007 SCCR 479 and made no reference to the decision of the High Court in the case of *Gemmell* 2012 SCCR 176 which considered matters relating to discount much more fully. He has made reference to the opinion of the court in *Gemmell* delivered by the Lord Justice Clerk and in particular at paragraph 48 thereof where his Lordship, on behalf of the court, makes a series of comments in relation to the question of discount. In particular his Lordship comments that "the strength of the current Crown case, need not necessarily restrict the discount applied by the court".

[3] The essential underlying factor in determining discount is the utilitarian value of the plea. The Lord Justice Clerk at paragraph 46, shortly before the section quoted to us of the judgment in *Gemmell* which was quoted to us by Mr Findlater makes reference to cases on summary complaint which share certain similarities with the present matter. His Lordship says this:

"In many cases particularly those prosecuted on complaint, the witnesses will be police officers. In other cases much of the evidence may come from experts. An early plea may have some utilitarian value for such witnesses in the sense that they can get on with other useful work but it can scarcely be said that they are spared an ordeal. In my opinion an early plea in such cases can attract at most a token discount."

[4] It appears to us that that situation in terms of the utilitarian value of the plea is very much on all fours with the situation on the present case. The discount applied by the sheriff in the present circumstances amounts to a discount of the order Lord Gill is referring to in

paragraph 46 and accordingly for that reason we shall leave the decision of the sheriff undisturbed in the present case.

HFM