

3rd August, 1987

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

POLICE COURT APPEAL: PETER FROMAGE

DEPUTY BAILIFF: This is a difficult case. This Court has said on a number of occasions that even in respect of a first offence of driving whilst unfit, where the concentration of alcohol is very high, there should be a custodial sentence unless there are exceptional circumstances. We want to encourage the Magistrates to maintain that policy. Of course the task of this Court is made easier because in every case we have the benefit of a background report and wherever appropriate, of a psychiatric report as well. In the instant case, the appellant was a first offender and if a man has reached the age of thirty-eight years without a record of any kind that must count as a valuable insurance policy and he is not likely to be deprived of his liberty. But these factors are not exceptional circumstances, which must be circumstances relating to the offence and not to the offender. So the Court faced conflicting principles. The case heard this morning of Scott and the two cases of O'Farrell and Le Page heard in June and July of this year, show that the Police Court does depart from policy even where the alcohol concentration is in excess of two hundred millegrams if there are particular mitigating factors, and we are now aware of two other cases, that of Morel which is particularly similar and that of Flaguel. Here the Police Report showed that the accused had a heavy drink problem. This was substantially supported by Counsel who asked not only for a Probation report but a Psychiatric report as well. It was unusual too that the Centenier intervened on behalf of the appellant. The appellant had voluntarily surrendered not only his licence to drive but his firearms licence as well. We might interpose here to express the hope that in the case of alcoholics we hope that Constables will use their power (which they have under the Road Traffic Law) to

revoke licences to drive. The appellant had good references, he had co-operated fully. In those circumstances, the Magistrate should have had the benefit of Probation and psychiatric reports in order to consider whether treatment or Community Service could properly be substituted for a prison sentence. Accordingly, applying the Provisions of Article 17 (3) of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949, we quash the sentence of imprisonment without prejudice to the Magistrate's right to reimpose it and we remit the matter to the Magistrate with a direction that he should obtain and consider both a Probation report and a psychiatric report before passing sentence. In the meantime we renew bail and the disqualification will remain in force. Finally, Mr. Robinson shall have his legal aid costs.

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Authorities referred to in the judgment:

Police -v- Margaret Elizabeth Morel, née Foster - Police Court: 14th July, 1987

Police -v- Winston John Flaguel - Police Court: 9th June, 1987

Police Court (Miscellaneous Provisions) (Jersey) Law, 1949 - Article 17(3)

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

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

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

Other authorities referred to:

Police -v- Paul Henriette - Police Court: 2nd June, 1987

Police -v- Justin Robert McKain - Police Court: 2nd June, 1987

Police -v- Wendy Dack - Police Court: 2nd June, 1987

Police -v- John Martin - Police Court: 8th June, 1987

Police -v- John Gardiner - Police Court: 30th June, 1987

Police -v- Cherylinn Ann Mullane - Police Court: 30th June, 1987

Police -v- Darren Lesley Latimer - Police Court: 18th May, 1987

Police -v- Grant McFee Hamilton - Police Court: 7th May, 1987

Police -v- Basil John Le Blancq - Police Court: 14th May, 1987

Police -v- Philip Guy de Carteret - Police Court: 18th May, 1987

Police -v- Martin Patrick Kane - Police Court: 18th May, 1987

Police -v- Pierre Francois Louis Ollivier - Police Court: 1st April, 1987

Police -v- Alan Barr Rodger - Police Court: 23rd April, 1987

Police -v- Christopher Rowland Allen - Police Court: 30th April, 1987